

2418
FILED 01/24/23 10:05 USDC OR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OREGON

Elizabeth Diane Downs,
Plaintiff

Case Number: 6:23-cv-119-MK

Lane County Oregon,
Defendant

42USCS1983
Civil Rights Complaint

OPENING PETITION

PLAINTIFF PRO SE
Elizabeth Diane Downs W49707
CCWF 512-02-02L
Chowchilla, Ca 93610-1508

DEFENDANT
Lane County Oregon
Lane County Courthouse
125 E. 8th Avenue
Eugene, OR 97401

1-14-2023

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OREGON

Elizabeth Diane Downs,
Plaintiff

Case Number:

v

Lane County Oregon,
Defendant

42 USCS 1983
Civil Rights Complaint

I. AUTHORITY

Since 2015, Defendant has illegally imprisoned Plaintiff by violating Oregon DNA Statutes.

DOE v BARGER, 193 F. Supp. 2d 1112 (2002)
42 USCS 1983 may be used to enforce
Statutory Rights as well as Constitutional
Rights.

5 USC 706: " ... the reviewing court shall
decide all ... STATUTORY provisions ... The
reviewing court shall ...

- (1) compel agency action unlawfully withheld ...;
- (2) hold unlawful and set aside actions, findings,
and conclusions found to be ---
 - (A) arbitrary, capricious, an abuse of
discretion or otherwise not in accordance
with the law;
 - (B) contrary to constitutional right ...

SKINNER v SWITZER, 562 U.S. 521, 524-525 (2011)
Plaintiff may file a lawsuit pursuant to 42 USCS 1983,
alleging a procedural due process violation and seek
an injunction to perform DNA testing.

Plaintiff is not seeking release from prison by this action.

She's seeking financial compensation for years of cruel and unusual punishment inflicted on her by Lane County Oregon Judges who've used their badges of authority to deprive her of the right to due process guaranteed by the 6th and 14th Amendments of the United States Constitution.

DUCHESNE v SUGARMAN, 566 F2d 817 (2nd Cir. 1977)
42 USCS 1983 was designed to protect individuals against misuse of power made possible only because the wrongdoer is clothed with authority of State Law.

42 USCS 1983 has the authority to try the case brought against Defendant by Plaintiff in this DNA case.

II. EXHAUSTION OF APPELLATE REMEDIES

Plaintiff filed for Post Conviction Relief under ORS 138.690 to have DNA tested in the case of Downs v Oregon, Lane County Case Number: 22-CV-16308, on 5-18-2022.

On 10-30-2022, Plaintiff's brother searched online for a status of said case because Plaintiff had heard nothing from the Court. That was when Plaintiff discovered Judge Jay A. McAlpin had dismissed her DNA case on 10-4-2022.

Plaintiff's Notice Of Appeal had to be filed by 11-3-2022. She immediately wrote to the Court to request a copy of the "Order To Dismiss" (App. 1).

On 11-21-2022, Plaintiff received a letter from the Court, allegedly mailed to Plaintiff on 11-9-2022 (six days past the date

Plaintiff's Notice Of Appeal had to be filed). It's clear the Court never intended to send Plaintiff a copy of the Court Order at all (App. 2).

The 10-4-2022 date on the Judgement Order prevented Plaintiff from filing a timely Notice Of Appeal after 11-3-2022 (App. 3). Because of Lane County Oregon's trickery and deceit, Plaintiff has no option but to seek relief by virtue of 42 USCS 1983.

III. PARTIES AND JURISDICTION

Plaintiff is an Oregon prisoner, tried for murder and attempted murder in Lane County, Oregon in 1984.

Defendant amounts to all Officers of the Lane County Court, Lane County Sheriff's Officers and Detectives involved in the investigation, arrest, and trial of Elizabeth Diane Downs, and all Officers of the Court (including all subsequent District Attorneys) who've had a hand in denying Plaintiff the Statutory Right to have evidence in her case tested for DNA.

DISTRICT OF COLUMBIA v CARTER, 409 U.S. 418
93 S.Ct. 602 (1973)

The purpose of 42 USCS 1983 is to afford a Federal Right in a Federal Court to have DNA tested because, by reason of prejudice, passion, neglect, intolerance, or otherwise, State Laws have not been enforced and claims of citizens to enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment were denied by State Agencies.

Plaintiff petitioned Lane County to test DNA evidence in her case. Defendant refused to try the case.

DAVIS v SCHERER, 468 U.S. 183; 104 S.Ct. 3012 (1984)
Through Civil Rights Statutes, Congress intended to
enforce provisions of the Fourteenth Amendment against
those who carry a badge of authority of State and in
some capacity misuse it.

COSTANICH v DEPARTMENT OF SOCIAL AND HEALTH SERVICES,
627 F3d 1101, 1110 (9th Cir. 2010)
"Substantive due process protects individuals from
arbitrary deprivation of their liberty by government"
[DNA Jury Instructions]

IV. LANE COUNTY'S HISTORY

It is necessary for Plaintiff to establish Lane County's history of evidentiary abuse lest this Court be deceived into believing Lane County Judge Jay A. McAlpin's decision to dismiss Plaintiff's DNA Petition was a one-off oopsie.

While it is Plaintiff's position the DNA evidence in her case should be tested to prove her actual innocence, Plaintiff has no faith in Lane County's handling of and interpretation of the evidence.

Lane County's history of mishandling of evidence will prove this Court should DNA-test the evidence in Lane County's custody and award Plaintiff damages because Lane County wittingly withheld the truth about the DNA evidence since 2015 for the purpose of illegally imprisoning Plaintiff these past eight years.

On 5-19-1983, Plaintiff and her three children were shot by a male stranger. That same night, Lane County Criminalist Jim Pex found chewed gum and beer cans near the murder casings (App. 4).

One year later, Lane County entered the chewed gum into evidence as EXHIBIT 15, at trial (App. 5). In 1998, the Lane County Evidence Manager told Federal Investigator William Teesdale that evidence in a murder trial is kept forever (App. 6).

The shooter fired his gun at the Downs Family six times. Lane County swabbed Plaintiff's hands for gunshot residue (GSR) at the hospital. The Lab results came back three months later (App. 7). Plaintiff didn't fire a gun the night of the shooting. She certainly didn't discharge a weapon SIX TIMES.

Shortly after Plaintiff's hands were swabbed for GSR, Lane County performed a trace metal test on her hands (App. 8). Within two hours of the shooting Lane County knew Plaintiff neither held nor fired a gun the night Plaintiff and her children were shot by a male stranger wearing a short, shag haircut and denim jacket.

Rather than follow the evidence, Lane County employed a witness to perjure herself for the State (App. 9). At the 1984 trial Judy Patterson convinced the jury Plaintiff went into the Emergency Room bathroom, didn't close the door, and ran water in the sink. What was the jury expected to think except the State wanted them to believe Plaintiff washed her hands of incriminating evidence.

Lane County knew their witness was lying. One year earlier Patterson reported to police that Plaintiff went nowhere near the bathroom the night of the shooting (App. 10).

UNITED STATES v AGURS, 427 U.S. 97, 102 (1976)
"The [Supreme Court] has consistently held that a conviction obtained by the known use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury".

Lucky for Lane County, Defense Counsel didn't call in an expert to show GSR cannot be "rinsed off" with running water, AND he didn't use Patterson's year-old police report to prove the State's witness was lying. Lucky for Lane County? Or was it something more devious?

The murder scene was processed for fingerprints (App.11). Lane County didn't enter the prints into the National Fingerprint Database to discover the identity of the perpetrator who murdered Plaintiff's seven-year-old daughter. Lane County ONLY compared the prints on Plaintiff's car to the Plaintiff.

There were 24 finger and palm prints at the murder scene that didn't match Plaintiff. When asked why Defense Counsel didn't use the report to assist his client, it was learned Prosecutor Fred Hugi convinced Plaintiff's attorney to NOT use the report to effectively defend his client and prove that someone other than Plaintiff and her children were at the scene of the shooting that night (App. 12).

Plaintiff was not permitted to visit her three-year-old son in the hospital after 6-18-1983. In July 1983, Daniel began telling his hospital nurses about the "mean man" who shot him (App. 13). Prosecutor Hugi didn't want the jury to know about the child's spontaneous utterings so he convinced Judge Gregory Foote to rule those particular reports inadmissible while allowing all other hospital reports into evidence.

Plaintiff's eight-year-old daughter was asked to draw a picture of the person who shot her (App. 14). She drew a picture of a left-handed man holding a gun. In fact, only a left-handed person could've negotiated the attack on Plaintiff's son behind the driver's seat (App. 15). Plaintiff is and has always been right-handed.

Christie drew her attacker wearing a short, shag haircut and a solid colored jacket. Plaintiff's hair was much longer (App. 16) and she was wearing a plaid shirt that night.

Lane County didn't want the jury to think about those facts, so they had Dr. Carl Peterson write "Mom with gun" at the top of Christie's drawing of her attacker. That's called JURY TAMPERING.

The drawing of Christie's mom shows Plaintiff wearing the plaid shirt (App. 17). The Court can see Plaintiff's hands are raised in a defensive posture and they're empty. Christie was showing everyone there was no gun in her mom's hand. Again, Lane County didn't want the jury to "get it", so they wrote "Cheryl" at the top of that drawing.

But, Cheryl never owned a plaid shirt. Nor did Christie or Daniel. Only Plaintiff owned a plaid shirt in Christie's family, and her mom was wearing it when she faced down the man who shot her children the night of May 19, 1983.

GEORGE v CAMACHO, 119 F3d 1393 (9th Cir. 1997)
MARIANA ISLANDS v MENDIOLA, 976 F2d 475, 486 (9th Cir. 1992)
quoting
BERGER v UNITED STATES, 295 U.S. 78, 88;
55 S.Ct. 629, 633; 79 L.Ed. 1314 (1935)
"It is as much [the prosecutor's] duty to refrain
from improper methods calculated to produce a wrongful
conviction as it is to use every legitimate means to
bring about a just one".

Nineteen days after Cheryl Lynn Downs was murdered with a .22 caliber semi-automatic Ruger (that disappeared with the shooter), John Oliver was murdered with a .22 caliber semi-automatic Ruger (that disappeared with the shooter) a mile away.

Lane County Deputy District Attorney Fred Hugi prosecuted two men for the Oliver murder AFTER he prosecuted Plaintiff for her daughter's murder. He used ballistics evidence in both cases, gaining convictions in all cases.

On 11-20-1994, Ricky Kuppens confessed to the murder of John Oliver and committed suicide with the .22 caliber semi-automatic Ruger he used to kill Oliver. Lane County fought to support the wrongful conviction of two innocent men. Lane County also refuses to let Plaintiff see the ballistics in the Oliver case, to see if

the gun Kuppens used to kill Oliver was also used to kill her daughter. Lane County fiercely defends their convictions. Especially their wrongful convictions.

SMITH v SECRETARY OF NEW MEXICO DEPARTMENT OF
CORRECTIONS, 50 F3d 801, 823 (1995)

"The prosecutor, acting as a representative of the sovereign, has an obligation to ensure 'not that it will win a case, but that justice shall be done'. United States v Bagley, 473 U.S. 667, 675 (1985) (quoting BERGER @ 88)".

By now it should come as no surprise to this Court that Lane County refuses Plaintiff's request to re-examine and compare the ballistics in the Oliver case and Downs case.

In the absence of a murder weapon in the Downs case, Lane County claimed ejector marks on the base of the murder casings matched extractor marks on the base of cartridges allegedly found in Plaintiff's apartment.

Lane County brought in California Criminalist John Murdock to support the claim of Jim Pex that these matching marks put the murder weapon in Plaintiff's possession. But John Murdock wanted to perform tests of his own first. Tests he documented in writing and in photograph. Murdock noted the marks on the murder casings and the cartridges DO NOT MATCH (App. 18).

In fact, Murdock's last notation before Lane County sent him packing was:

"a re-exam has caused me to reconsider the id -- it seems to fall apart at 4x obj. I told Jim Pex ... he made some tests wherein he caused marks to be made on base of test ctgs "

A year later Pex testified (App. 19):

"I obtained several Rugers around town from both sporting goods stores and from our firearms, our weapons expert in Salem. He maintains our weapons that are seized from courts and insures their destruction, but he had a number of Rugers that were ready to be destroyed, and he sent them to me".

One of those Rugers, used in another crime was used by Lane County's Jim Pex to manufacture ballistics marks on the base of cartridges (and to create matching marks on casings after John Murdock was sent back to California?).

It's no wonder Lane County will not let Plaintiff or her attorneys see the ballistic evidence in the Downs case and compare it to the Oliver case. That nasty business is best kept under the rug. Best for Lane County. Not so good for Justice.

Defense Counsel did try to see the police reports before and during trial (App. 20). During the trial, Lane County Investigator Roy Pond was questioned by the Court during an "Offer of Proof" hearing outside the presence of the jury.

Pond's job was to follow up on leads. He said the information in those reports "substantiated the defendant's version of what happened" (App. 21). Pond testified Lane County Sergeant Hince ordered him to stop investigating leads one month after the shooting. Pond was transferred to the County Jail and testified

reports were subsequently destroyed. Judge Foote examined the reports provided to him by Lane County Officers of the Court and said he found nothing of use to the defense.

UNITED STATES v BUTLER, 567 F2d 885, 891 (9th Cir. 1978)
"Since ... investigative officers are a part of the prosecution, the taint on the trial is no less if they rather than the prosecution were guilty of nondisclosure".

Ten years after the shooting, Plaintiff learned the name of a "Free Soul" Affiliate who'd been confessing to the murder of her daughter since the day after the shooting. James Clair Haynes. The Plaintiff brought this man's confession to Lane County and asked them to investigate. They refused. They said the case was closed.

Five years after that, Federal Attorney Wendy Willis and Federal Investigator William Teesdale tried to get the withheld reports referred to by Officer Pond during trial. Lane County said they couldn't see the reports because the case was ongoing. Then Lane County said there were no reports at all and everything had been destroyed (App. 22).

Federal Judge Ansel Haggerty finally issued a warrant, directing Lane County to release all reports in their possession to the Federal Attorneys. Among the 4700 documents Lane County withheld was a report dated two days after the shooting (App. 23). A caller reported a "Free Soul" Affiliate was confessing to the shooting of the Downs Family. This 15 year old report would've

aided Plaintiff in her defense (App. 24). Lane County lied to State Judges, a Federal Judge, to the jury, the media, and the world to secret the truth away for 40 years. Plaintiff has no reason to trust Lane County will test the DNA and/or tell the truth about the DNA test results after all this time.

CARRIGER v STEWART, 132 F3d 463, 479 (9th Cir. 1997)
"Evidence is material, and must be disclosed, 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different'. (citing Kyle v Whitley, 514 U.S. 419, 433; 112 S.Ct. 1565 (1995) and United States v Bagley, 473 U.S. 667, 682; 105 S.Ct. 3383 (1985).)".

It isn't Plaintiff's goal to retry her 40 year old case in this Court. She simply felt the need to show this Court why she was denied her Statutory Right to have the DNA tested in the evidence in Lane County's possession.

Lane County has never released exculpatory evidence to Plaintiff without a District Court Order and they never will.

UNITED AIRLINES v EVANS, 431 U.S. 553 (1997)
When wrongful conduct has accrued over a period of time, the violation is considered a continuing wrong.

Lane County has known since 2015 that the DNA evidence in this case vindicates Plaintiff but they refuse to try the case. Plaintiff requests compensation for their continuing wrong.

V. CLAIM FOR RELIEF

Plaintiff has not been housed in Oregon since 1987. She didn't know about the Post Conviction Statute Oregon Legislators put on the books in 2000 regarding DNA. She only knew there was DNA evidence to be tested in her case.

In 2015, Plaintiff filed a WRIT OF HABEAS CORPUS in Lane County to have the DNA tested in the chewed gum. She submitted her Petition in March 2015. The Court returned her Petition for lack of a \$252 filing fee. Plaintiff attached the \$252 and resubmitted the Petition in May 2015. Nothing happened. Not a word from the Court. For months!

Plaintiff assumed the Lane County District Attorney was having the DNA tested and run through the National DNA Database to find the man who shot her children. She still thinks that. DA Patricia Perlow was doing something for eight months.

Then, suddenly and without preamble, Lane County Judge Charles M. Zennache assigned case number 15-CV-11115 to the case of Downs v State of Oregon (Habeas Case). And, in December this same Judge dismissed the case because it was not titled PETITION FOR POST CONVICTION RELIEF.

A reading of the pleadings and orders makes it clear the Lane County Court knew exactly what Plaintiff was seeking (App. 25). Lane County sent Plaintiff on an 18 month goose-chase that sent the blindfolded goose right back to Judge Zennache, who AGAIN dismissed Plaintiff's request to have the DNA tested (App. 26), because 15-CV-11115 was still a Habeas Corpus case and not a Post Conviction case.

In April 2022, Plaintiff stumbled upon the Oregon DNA Post Conviction Statute while looking for something else. She put together another request to have the DNA tested in the evidence entered into Court as EXHIBIT 15. She even attached a filing fee of \$282. Her Petition For Post Conviction Relief was entered as Downs v Oregon, Lane County Case Number 22-CV-16308 on 5-18-22. Again, nothing happened. Not a word from the Court. For months!

This time, though, Plaintiff has learned a few things about the new world out there. Things have changed in the 40 years Plaintiff has been locked up. Computers run everything now!! No more secrets.

Plaintiff's brother went online to examine the activity in her DNA case:

5-18-2022 --- case assigned to Judge Charles Zennache
8- 8-2022 --- case assigned to Judge C. E. Carlson
10- 4-2022 --- case assigned to Judge Jay A. McAlpin

A whole lot of Judges. A whole lot of nothing. Well, not absolutely nothing. Lane County returned Plaintiff's \$282 filing fee because ORS 138.690 (4) says; "The court may not charge a fee for any filing under ORS 138.688 to 138.700". So how did the Lane County Court miss:

ORS 138.690 (1) A person may file ... a petition requesting the commencement of a DNA test proceeding and requesting that the court appoint an attorney for the purpose of determining whether to file a motion under ORS 138.692 for the performance of DNA testing on specific evidence ...

ORS 138.694 (1) A person described in ORS 138.690 is entitled to counsel during all stages of the proceedings ...

Plaintiff did request that an attorney be appointed to represent her. In fact she was so convinced the Lane County Court had to abide by the mandatory language of the Law that she wrote to the Public Defender's Office in Eugene, Oregon to get the ball rolling. They didn't answer. She wrote again (App. 27). They still didn't answer. Her third letter was returned with the notation "Cannot be delivered as addressed". Hmmm.

Plaintiff wrote to the Innocence Project (App. 28). DNA is their thing. The Oregon Innocence Project wrote back (App. 29):

"Based on the record, there are at least two types of physical evidence that were recovered near the crime scene ... you may want to pursue testing of this evidence ... that could be very helpful to your case ... [BUT] ... the Oregon Innocence Project will not represent you as counsel in your continued quest for exoneration".

WOW!!! And there it is. Clear as day. The DNA will prove Plaintiff has been telling the truth for 40 years, but Lane County Oregon does not want Christie and Daniel Downs to know who really murdered their sister. Lane County is plugging away behind the scenes convincing everyone to turn a blind eye to the truth just so their conviction of an innocent woman is not overturned.

United States v Nixon, 418 U.S. 683, 709;
94 S.Ct. 3090; 41 L.Ed 2d 1039 (1974)

"We have elected to employ an adversay system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depends on full disclosure of all the facts ... "

In TOWNSEND v SAIN, 372 U.S. 293; 83 S.Ct. 745, 757 (1963), the Supreme Court listed several reasons State errors REQUIRE the Federal Court to conduct an evidentiary hearing. Plaintiff lists the pertinent reasons as follows:

*** The State's determination is not supported by the record.

*** There is a substantial allegation of newly discovered evidence.

*** The State did not afford Plaintiff a full and fair hearing.

Plaintiff Petitioned for Post Conviction Relief to have evidence in her case tested for DNA to identify the man who actually committed the crime for which she's been wrongfully incarcerated 78% of her adult life. Oregon Statute, ORS 138.694 requires the Court to appoint an attorney to represent Plaintiff in the DNA Post Conviction proceeding to make sure Lane County wouldn't deny Plaintiff relief on a legal technicality.

Lane County didn't do that. The Lane County Court denied Plaintiff relief without appointing an attorney and without conducting a Post Conviction Hearing to expedite the unlawful proceeding.

THEN --- AFTER PLAINTIFF WENT LOOKING FOR HER OWN ATTORNEY IN LANE COUNTY --- the Lane County Court contacted a Law Firm in Portland, Oregon to represent Plaintiff on appeal of their illegal judgment. Seriously?! Why would the Court do that after denying Plaintiff legal representation in a Lane County Court?

The answer is obvious to anyone who wants to see the truth. Read the attorney's letter (App. 30):

"The Lane County Circuit Court appointed us to represent you on PCR appeal ... I will briefly summarize the PCR appeal process [process laid out] ... Sometimes weeks or months may pass without you hearing from us. Do not be concerned ... the Court of Appeals routinely grants transcribers ... us and the State extensions of time to file the briefs".

OOps, there it is. Plaintiff's appeals usually take one to two years to resolve. It's obvious Lane County appointed an appellate attorney to assure Plaintiff will remain in prison another two years before a Federal Court requires Lane County to produce the evidence for DNA testing.

Look again at the attorney's letter. Lane County told O'Connor Weber LLC that Plaintiff wanted to appeal the judgment denying her post-conviction relief. That's not exactly true. Plaintiff would've appealed the Lane County judgment, but the Court held it past the time of her ability to file a timely "Notice of Appeal". Plaintiff was resolved to filing a Civil Rights Case in this Court. That is who she was looking to represent her. Federal Attorneys to sue Lane County for YEARS of shenanigans exactly like this. And that is the reason Lane County got up off their hinnies and appointed Plaintiff an attorney to tie her up in State Court for two more years, AFTER denying her an attorney required by law to represent her in all stages of her DNA Post Conviction Hearing.

RHODEN v ROWLAND, 10 F3d 1457, 1460 (9th Cir. 1993)
The Ninth Circuit Court Of Appeals required an evidentiary hearing after Plaintiff developed a record of prejudice.

Plaintiff now has an attorney to represent her in a State Appeal of Lane County's unlawful judgment in Downs v Oregon, Case Number 22-CV-16308. Nothing prevents Plaintiff from making a collateral attack in her DNA case for Constitutional Violations perpetrated by Lane County to deny her Right to Due Process.

Lane County has known since 2015 that the DNA evidence in her case exonerates Plaintiff. They've known the truth and have made a concerted effort to ignore, dismiss, and outright sabotage Plaintiff's Statutory Right to be vindicated by the evidence the State entered in her case and identified as EXHIBIT 15. The evidence mattered in 1984 and it matters today.

Plaintiff's Dad died in 2017. Had Lane County performed the DNA test requested by Plaintiff in 2015, they would've had two years together before he died. Plaintiff's widowed, 85-year-old Mom wants to spend her last days with her 67-year-old daughter at home.

Lane County's stubborn refusal to NOT abide by Oregon Statute has caused Plaintiff and her Family extraordinary pain, suffering, and financial cost.

VI. PRAYER FOR RELIEF

Plaintiff prays this Court will ORDER a DNA test of State's EXHIBIT 15 (chewed gum);

Plaintiff further prays this Court for an ORDER directing Lane County Oregon to compensate her for the pain and suffering they've inflicted on her since 2015.

Plaintiff lastly prays for such other relief this Court
deems just.

I swear under penalty of perjury the foregoing is true.

Dated the 14th day of January, 2023.



Elizabeth Diane Downs

CERTIFICATE OF MAILING

I certify a true copy of this CIVIL RIGHTS COMPLAINT was
placed in the mail on 1-4-2023, addressed to the following:

Oregon Attorney General
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4700

Lane County DA Patricia Perlow
125 E. 8th Avenue.
Eugene, OR 97401



Elizabeth Diane Downs W49707
CCWF 512-02-1L
PO Box 1508
Chowchilla, CA 93610-1508

APPENDIX

1. Plaintiff's letter requesting Court's Order to Dismiss
2. Court's letter responding to Plaintiff's request
3. Court's GENERAL JUDGMENT TO DISMISS
4. 1983 Evidence Report (chewed gum and murder casings)
5. 1984 Trial EXHIBIT 15 (chewed gum)
6. Lane County maintains evidence in murder cases forever
7. Plaintiff didn't fire a weapon
8. Plaintiff didn't hold a gun
9. Judy Patterson lied to the jury
10. Plaintiff didn't rinse her hands of gunshot residue
11. 1983 Fingerprint report
12. Prosecutor and Defense Counsel agreed to not use fingerprints
13. Daniel's hospital reports reporting the "mean man" who shot him
14. Christie's sketch of the shooter holding the gun in his left hand
15. Sketch of interior of the car (crime scene)
16. Photos of Diane with longer hair a week after the shooting
17. Christie's sketch of mom wearing her plaid shirt
18. Jim Pex manufactured false evidence (ballistics)
19. Pex used Rugers he got from his firearms expert in Salem
20. Jim Jagger tried to get police reports before trial
21. Roy Pond testified the police reports supported the defense
22. Lane County said there are no police reports
23. Police Report dated 5-21-1983 (shooter's confession)
24. Jim Jagger's Affidavit Lane County didn't give him that report
25. Judge Zennache dismissed Habeas Corpus DNA case in 2015
26. Judge Zennache dismissed DNA case in 2015
27. Plaintiff's letters to Public Defender seeking representation
28. Plaintiff's letter to THE OREGON INNOCENCE PROJECT
29. Oregon Innocence Project's letter to Plaintiff
30. Jed Peterson's letter to Plaintiff (Lane County Court appointed him to represent Plaintiff on appeal after denying Plaintiff legal representation on DNA Post Conviction case)

OCTOBER 30, 2022

CLERK OF THE COURT
LANE COUNTY COURTHOUSE
125 E. 8TH AVENUE
EUGENE, OR 97401

IN RE: DOWNS, GREGON, Case No: 22-CV-16308

DEAR CLERK:

MY BROTHER CHECKED THE STATUS OF MY
DNA CASE + DISCOVERED JUDGE McARFIN
DISMISSED MY PETITION. THAT WAS TWO
WEEKS AGO AND I'VE STILL NOT RECEIVED
A COPY OF THE ORDER.

THIS IS THE SECOND TIME I'VE NEEDED TO
REQUEST A COPY OF A COURT ORDER (TO
FILE A NOTICE OF APPEAL) FROM THIS COURT.
PLEASE SEND ME A COPY OF THE "ORDER TO
DISMISS" IN THE ABOVE ENTERED CASE.

THANK YOU.

D.

ELIZABETH DIANE DOWNS W49707
CCWF 513-02-1
PO Box 1508
CHOWCHILLA, CA 93610-1508

APP 1



CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY
LANE COUNTY COURTHOUSE
125 E. 8th AVENUE
EUGENE, OREGON 97401-2926

*rec'd
11-21-22*

November 9, 2022

Elizabeth Diane Downs W49707
CCWF 512-02-1L
PO Box 1508
Chowchilla, CA 93610-1508

RE: Lane County Circuit Court Case number 22CV16308

Dear Ms. Downs,

Lane County Circuit Court received a request for records the court may hold. Please see below information. For this request, copies have been provided free of charge because it is more convenient for the court. However, future copy requests will be charged at \$0.25 cents per page. A certification of documents will be \$5.00 per document. If you have any questions, please feel free to contact the person listed below.

- General Judgment of Dismissal in Lane County Circuit Court case 22CV16308

Have a great day!

Sincerely,

[Signature]
Court Clerk

Lane County Circuit Court
Archives/Records
125 E 8th Ave
Eugene, Oregon 97401

APP 2

Rec'd
11-21-22

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE
125 E. 8th Ave. Eugene Oregon 97401

Case No: 22CV16308

Elizabeth Diane Downs

Plaintiff

**GENERAL JUDGMENT OF
DISMISSAL**

v.

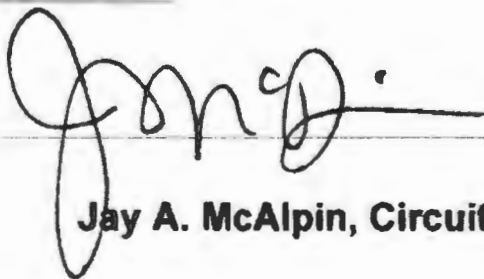
State of Oregon

Defendant

THIS MATTER came before the Court on its own motion, the Court having reviewed the file, and the Court being otherwise fully advised;

IT IS HEREBY ORDERED AND ADJUDGED that the above-entitled case is dismissed in its entirety.

10/3/2022 3:04:32 PM



Jay A. McAlpin, Circuit Court Judge

APP 3

OREGON STATE POLICE - Crime Detection Laboratory
1500 Valley River Rd., Eugene, Oregon 97401

Agency Case No. 83-2

State Laboratory No. E-20 836

EVIDENCE TRANSFER REPORT (Request for Lab Analysis)

OFFENSE HOMICIDE

COUNTY OF VENUE Lane

OFFENSE DATE 5/19/83

INVEST. AGENCY Lane

INVEST. OFFICER Reuther

VICTIM/COMPLAINANT (Establishment and/or individual):

ADDITIONAL EVIDENCE

OWENS, VANCE

OWENS, SHARAH

SUSPECT INFORMATION:

EVIDENCE SUBMITTED: (Describe)

(2) .22 Lead Bullets

(4) .22 Rem-UMC CASINOS

(2) .22 Lead Bullets

(1) Lead Bullet

several other items

"out of shell" - E-6

"out of shell" - E-6

EXAMINATION(S) REQUESTED:

REANALYZER TAKEN: YES NO (BLOOD ALCOHOLS)

OFFICER'S REPORT REQUESTED ON EVIDENCE CASES

DATE

SIGNATURE

APP 4

938

J. Per - D

1140

1 State's Exhibit No. 15 is some ~~strawberry~~
2 flavored bubble gum that I found on the roadway near
3 where the cartridge casings were found.

4 Q. Perhaps we could go on to Number 21 at this
5 time.

6 A. Those may not be in the courtroom right now.

7 Q. Let's move to 35.

8 A. State's Exhibit 35 is the rubber floor mat
9 that was on the right rear side of the Downs' vehicle.

10 Q. Did you do any testing of it?

11 A. Yes, I did.

12 Q. For what purpose?

13 A. I examined this floor mat under the
14 microscope for trace evidence materials and also
15 obtained some vacuumings from this.

16 What I did observe on this floor mat were
17 some gunpowder particles.

18 State's Exhibit 36 is the floor mat from the
19 left front floor of the Datsun. This would be the
20 driver's side.

21 Q. Did you likewise examine it?

22 A. Yes, I examined it microscopically, and on
23 this particular item I did not find any gunpowder
24 particles.

25 This is State's Exhibit 37. This is the

APP 5

DNA WOULD IDENTIFY THE MAN WHO SHOT US,

Wendy R. Willis, OSB No. 94496
Assistant Federal Public Defender
101 S.W. Main Street, Suite 1700
Portland, OR 97204
(503) 326-2123

Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ELIZABETH DIANE DOWNS,	)	CV No. 96-900 HA
)	
Petitioner,	)	AFFIDAVIT OF
	)	WILLIAM J. TEESDALE
vs.)	
)	
SONIA HOYT, Superintendent,)	
Oregon Women's Correctional Center,)	
)	
Respondent.)	
STATE OF OREGON)	
	) ss.	
County of Multnomah)	

I, William J. Teesdale, being duly sworn, depose and say:

A. Introduction

I am a staff investigator employed by the Federal Public Defender for the District

PAGE 1 - AFFIDAVIT OF WILLIAM J. TEESDALE

APP 6

62

of Oregon. I am also an attorney licensed to practice before the bars of England and Oregon. In September 1996 I was assigned to work on Diane Downs' federal habeas corpus case, *Downs v. Hoyt*, CV No. 96-900 (HA).

B. Attempts To Obtain Access To Evidence

On January 15, 1997, I telephoned Laureli at the Lane County Sheriff's Office evidence room. I identified myself to Laureli as an investigator with the Federal Public Defender's office and asked her some general questions about access to evidence and documents in closed criminal cases. Laureli told me that in most cases, after a defendant's direct appeal has finished, the evidentiary material is kept for a period of 30 days. Laureli told me that in murder cases, most items are usually kept forever. Laureli said that the process to view evidence in a closed criminal case was by making an appointment through her. I then requested such an appointment to view the remaining evidentiary material in the Diane Downs case. Laureli told me that she would check to see what was still available and call me back.

About half an hour after my initial telephone call, I received a call back from Laureli. Laureli told me that she had spoken to Detective Doug Welch in the Lane County Sheriff's Detective Unit who said that my request should go through the Lane County District Attorney's office. Laureli said that the information she had given me during the first telephone conversation was inaccurate and that it was the usual practice for requests to look at evidence to be referred to the district attorney's office. Laureli apologized for

giving me incorrect information. Laureli suggested that I contact Assistant District Attorney Fred Hugi and make the request through him.

After my conversation with Laureli, I telephoned the Lane County District Attorney's office and left a message for Mr. Hugi to contact me. About 10 minutes after leaving that message, I received a telephone call from Detective Doug Welch with the Lane County Sheriff's Office. Detective Welch explained that he was calling me about my request to review the Downs evidence. I explained to Detective Welch the nature of my request, and he asked when I would want to come and look at the material. Detective Welch also said that I should contact either Fred Hugi or another Assistant District Attorney, Paul Graebner, at the district attorney's office with my request. I told Detective Welch that I was hoping to come and look at the material in the following two weeks and that I would make the request to either Mr. Hugi or Mr. Graebner.

Detective Welch also told me that he could not remember what material was left in the Downs case, given the passage of time. Detective Welch said that he thought that the Lane County Sheriff had much of the material but that he was almost certain that the car had been sold or otherwise disposed of several years ago. Detective Welch said that he thought there was an evidence log which would give an inventory of the remaining evidence. I then asked Detective Welch for a copy of the log, and Detective Welch responded that he would check with Laureli in the evidence room.

After my conversation with Detective Welch, I left a further telephone message for Fred Hugi and a detailed message for Assistant District Attorney Paul Graebner.

On January 22, 1997, after receiving no response to my telephone messages, I wrote a letter to Detective Welch suggesting that I come down to look at the remaining material in the week beginning February 3, 1997. A copy of that letter is attached as Exhibit B. On February 5, 1997, having received no response to my letter, I contacted Detective Welch at the Lane County Sheriff's office. Detective Welch told me that he had spoken to Assistant District Attorneys Hugi and Graebner, and their feeling was that we were "trying an end run around the attorney general's office." Detective Welch said because of that, the district attorney was refusing access to the material, and any request should be made through the state attorney general's office. After my telephone conversation with Detective Welch, I wrote a further letter to him on February 12, 1997, responding to his suggestion that we were "attempting an end run around the attorney general's office" and asking that we be provided a copy of the evidence log. I received no response to my letter of February 12, a copy of which is attached as Exhibit C.

On March 25 and 26, 1997, I made written Oregon Public Records Act requests to the Lane County Sheriff's office, the State Police forensics laboratory, the State Police District Patrol Office, and the Springfield Police Department. Copies of those requests are attached as Exhibits F, G, H, and I. On April 9, 1997, I received responses from both the Springfield Police Department and the Lane County District Attorney's office. The Lane

App 6

County District Attorney declined to make the records available, stating that the records were exempt from disclosure under the Public Records Act on the basis of continuing litigation. The Springfield Police Department advised me that the police reports they maintained on the case were available either in person or by requesting them through the mail. After sending a further letter to the Springfield Police Department, together with my check for the copies, the Springfield Police Department records were provided to me on May 12, 1997.

On June 12, 1997, I had a telephone conversation with Terry Bekkedahl, the supervisor of the Oregon State Police forensics laboratory. I explained to Mr. Bekkedahl that I was calling to inquire about my public records request, because I had received no response. Mr. Bekkedahl told me that he had received my March 26 request and that it was still sitting on his desk. Mr. Bekkedahl said that after he received the request, he spoke to Assistant Attorney General Lynn Larsen about how he should respond. --Mr. Bekkedahl told me that Lynn Larsen said that many different people in the state police had received the same or similar requests. Mr. Bekkedahl told me that Lynn Larsen told him that the local district attorney's office took the position that the requests should be denied because there was continuing litigation and that he had the same opinion. Mr. Bekkedahl said that he was sorry that I had not received a formal response from the Oregon State Police and that he would call headquarters in Salem about that. Mr. Bekkedahl also

APP 6

mentioned that he had assumed because of Attorney General Larsen's comments that someone at the state police in Salem would have written a formal response.

C. Attempts To Speak With Trial Counsel

After leaving two telephone messages with Diane Downs' trial lawyer, James Jagger, I had a conversation with Mr. Jagger on November 19, 1996. I identified myself to Mr. Jagger and explained that I wanted to review his files on his representation of Diane Downs and also discuss his recollection of the case. Mr. Jagger told me that he was perfectly willing to give us access to the documents but that he was not willing to discuss the case at that point, since he might have to testify.

D. Attempt to Interview Christie Hugi

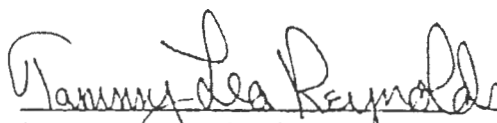
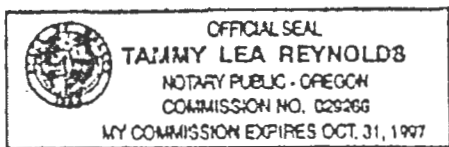
On November 26, 1996, Assistant Federal Public Defender Wendy Willis and I went to Christie Hugi's (formerly Downs) residence in Eugene. We introduced ourselves to Ms. Hugi, provided her with our business cards, and explained our wish to talk to her about the case. Ms. Hugi told us that she was not sure whether or not she should talk to us. As we continued to discuss the matter with Ms. Hugi, we were interrupted by one of her roommates who asked Christie whether or not she wanted her to make us leave. I then asked Ms. Hugi whether or not she, indeed, wanted us to leave, and she responded: "No, I'm shocked. I just didn't know any of this was going on." After some further discussion and more emotional comments from Ms. Hugi's roommate, I suggested to her that it was

probably best that we leave and give her a chance to think about our request. Ms. Hugi agreed with that suggestion, so we concluded the conversation.



William J. Teesdale

SUBSCRIBED AND SWORN TO BEFORE ME this 6th day of JUNE, 1997.


Notary Public for Oregon

Department of State Police

CRIME DETECTION LABORATORY

650 ROYAL AVENUE SUITE #11 MEDFORD OREGON 97501

August 26, 1983

Test taken 5-19-8.

David N. Burks, Sheriff
Lane County Sheriff's Department
125 E. 8th Avenue
Eugene, OR 97401

Re: HOMICIDE

Victim: DOWNS, CHERYL LYNN

Suspect: DOWNS, DIANE ELIZABETH

Agency Case #53-3268

C.D.L. #'s E-20,836 and #A-11,168

On August 8, 1983 this laboratory received by U.P.S. from Oregon State Police, Crime Detection Laboratory, Eugene, the following:

A sealed GSR-AA kit reportedly containing hand swabs from James O. Pex.

No significant amounts of Antimony and Barium were detected on these swabs. Therefore, it could not be determined if the subject recently discharged a firearm.

John C. Williams, Superintendent

by *Bradford C. Telyea*
Bradford C. Telyea, Lieutenant
247-90

BCT/pll

testimony in court was NO Antimony + Barium

cc: Oregon State Police, Crime Detection Laboratory, Eugene
Lane County District Attorney, Eugene

This is certified to be a true copy of the original report prepared by the undersigned.

Appendix

7

By

Bradford C. Telyea
1009

R. Antoine - D

1363

1 Hospital in connection with the shooting on that
2 evening?

3 A. Yes, I did.

4 Q. While there, did you contact the defendant
5 Elizabeth Diane Downs?

6 A. Yes, I did.

7 Q. And did you perform on her hands what's
8 known as a trace metal test?

9 A. Yes, I did.

10 Q. Tell us how you did that and what the
11 results were?

12 A. I had sometime earlier obtained a chemical
13 from the Oregon State Police Crime Lab the purpose of
14 which is to spray skin to detect the presence of trace
15 metals left after someone has touched or held
16 something metallic.

17 The spray that I used causes a discoloration
18 of the skin, having a different color for different
19 types of metals.

20 That night I sprayed the defendant's hands
21 or one hand and had a negative result. I didn't find
22 any discoloration.

23 Q. What time did you do that, do you remember?

24 A. A guesstimate, approximately 1:00, between
25 1:00 and 1:15.

APPENDIX 8

May 1984

J. Patterson - D

476

1 personnel because we still needed more help.

2 At that time while I was on the phone to the
3 police, Mrs. Downs had requested to make a call to her
4 parents and I said that as soon as I was done with my
5 phone calls to the doctors necessary and the police,
6 then she could call.

7 Q. Which police agency did you call?

8 A. Springfield.

9 Q. Why is that?

10 A. Well, I didn't know where it had occurred.
11 She had said at that point that it was Marcola, but
12 there were segments of that area that are still within
13 Springfield jurisdiction.

14 So I just called the number I knew off the
15 top of my head. So I just automatically dialed the
16 one I always dialed in reporting anything else.

17 Q. What happened then?

18 A. I explained to Diane that I had to call the
19 police, and she said yes that "I want them called in.
20 I need to call my parents."

21 And I told her again that I would have to
22 make my calls first and then as soon as I was done, I
23 would give her the phone and she could call.

24 While I was on the phone to the police she
25 asked about a restroom, and it's right behind my desk

LIAR

SEE APP. 10

APPENDIX 9

1 so I pointed her in that direction. She came out
2 while I was still on the phone and went toward the
3 trauma area.

4 Q. This restroom, did you see or hear anything
5 when she went in there?

6 A. I did not see anything. I heard running
7 water, but that was all.

8 Q. Any cups in that room?

9 A. No, there are not.

10 Q. Was the door open or closed?

11 A. Open.

12 Q. What happened then?

13 A. I called her back from the trauma area to
14 which she was heading, had her sit on the stool again
15 and completed my calls and then handed her the phone
16 and dialed her parents' number.

17 She talked on the phone. I made sure she
18 was at my desk. I went to the trauma area to find out
19 if there was anything I could do in there.

20 Dr. Mackey requested at that time that I
21 call Dr. Foster, a pediatrician-surgeon from Eugene,
22 so I left the trauma center, went into the back room
23 and used the phone back there to call Dr. Foster.

24 Q. What was happening? You've told us what you
25 were doing, and I take it Mrs. Downs was kind of in

83-3268

Project 100

Murder/Attempted Murder

T/Patterson, Judith Ann WFA 01/06/54

1551 "B" St.

Springfield, OR

Phone: 726-6862

Employed: McKenzie Willamette Hospital, ER Secretary/Sacred Heart Hospital, Pediatric Secretary

On 07/12/83 at approximately 1330 hours I contacted Judith Patterson via telephone. At that time I questioned regarding her contact with Diane Downs at McKenzie Willamette Hospital on May 19, 1983. Ms. Patterson indicated that she had been the first person that had attended to Diane's injury. She went on to relate that she removed a towel from Diane's arm, poured betadine on and around the wound and then dressed the injured arm. Ms. Patterson further advised that she had remained with Diane from the time Diane and her children entered the emergency room up until the time that Diane returned to the scene with the Sheriff's Deputies. She also stated that she could not recall Diane ever asking her to use the restroom, however, Diane had walked away out of her sight on several occasions during this period of time.

On 07/19/83 at 1035 hours I re-contacted Judy Patterson via telephone at Sacred Heart Hospital. At that time I requested that she relay the sequence of events involving the Downs family which occurred on May 19, 1983. She recalls Diane Downs entering the emergency room stating something to the effect, "My kids were shot." Diane then went back outside and returned moments later as medical personnel were carrying her children into the emergency room. Ms. Patterson recalls she then called out a, "Code 4" which is a request for medical personnel to respond to an emergency. Ms. Patterson advised she then began calling available surgeons, the anesthesiologist, and various other medical personnel. She went on to relate that while making these calls she had Diane sit next to her desk. After she had contacted all the required medical staff, Ms. Patterson stated to Diane, "I'm going to call the police." Diane responded that she wanted them called and there was a brief discussion as to where the crime had occurred. Since Diane was not sure of the location, Ms. Patterson decided to call the Springfield Police Department. Immediately after calling the police department advising them of the shooting Ms. Patterson then began making, "In house calls." At that time Diane began stating that she wanted her parents notified. Ms. Patterson informed her that her main priority at that time was to obtain assistance for the children and then she would get someone for her, referring to Diane. After making the, "In-house calls," for more personnel Ms. Patterson then dialed the telephone for Diane and allowed her to speak with her parents. Ms. Patterson further advised that normally she would make the initial notification to the family however, she felt that Diane was very calm and would have no problem communicating. She also indicated that she left her desk for a short period of time while Diane was conversing with her parents and Ms. Patterson did not overhear a majority of the conversation.

APPROX 10

State of Oregon
Department of State Police
Salem, Oregon 97310

REPORT OF THE
BUREAU OF CRIMINAL IDENTIFICATION
LATENT FINGERPRINT SECTION

DATE: March 28, 1984

TO: Mr. Dave Burks
Lane County Sheriff
Eugene, OR 97401
ATTN: Cat. Douglas E. Welch

AGENCY CASE NO. 83-3268

LATENT CASE NO. 45604

RE: MURDER/ATTEMPTED MURDER 05/19/83

DOWN, CHRISTIE ANN - Victim
DOWN, CHERYL LYNN - Victim
DOWN, STEPHEN DANIEL - Victim

REFERENCE: Incident Report by Sgt. Rutherford dated 05/20/83.

RECEIPT & DISPOSITION OF EVIDENCE: Seized by writer on 09/08/83. One inked fingerprint card and one inked palm print card were received by mail on 03/13/84 and they are being returned by mail with this report.

EVIDENCE:

- 2 - Rolls of 120 film (45604 P-1 thru P-24) (retained in this case file)
- 13 - Latent print lift cards (45604 P-1 thru P-24) (retained in this case file)
- 1 - Inked fingerprint card
- 1 - Inked palm print card

EVALUATION:

7-Latent fingerprints and 10-latent palm prints contained a sufficient amount of clear ridge detail for identification purposes. They were marked 45604 P-1, P-3 thru P-17, and P-24, and photographed. Latent prints marked 45604 P-2 and P-18 thru ANALYSIS: P-23 were voided due to insufficient clear ridge detail.

On 09/08/83 writer processed a red 1982 Nissan Pulsar NX 2-door sedan, Arizona license BJJ 787, VIN JN1NM24S7DM11317, located at the County Shops, Eugene, OR. No physical evidence was seized from the vehicle.

The latent fingerprints and palm prints have been compared with the inked fingerprints and palm prints of the following suspect, but no identification was effected.

DOWN, ELIZABETH DIANE

DOB 08/07/55

Photographic copies of the latent prints are being retained in this case file.

John C. Williams, Superintendent

By Jon D. Painter

Jon D. Painter, Trooper

JDP:njl
Copy to:
Lane Co. DA

APP 11

I, the undersigned, legal keeper of records for the State Police, do hereby certify that the copy has been compared by me with the original that it is a true and correct transcript and of the whole or of a specified part of said original as it appears on file in my official care and custody.
In testimony whereof, I have affixed my signature.

~~PROSECUTOR~~~~HUGI~~

Fingerprints

1991

1 Q I guess-

2 A Both Mr. Jagger and Mr. Reid had access to the
 3 car prior to the time that it was washed. It is also my
 4 recollection that the car was tested for fingerprints;
 5 that the results were discussed with Mr. Jagger and we
 6 concluded that they were not helpful to either side. That
 7 does not refer to anything that happened in the courtroom.
 8 That was a pretrial discussion I had with Mr. Jagger. I
 9 received a fingerprint report. It was inconclusive. I
 10 talked with Mr. Jagger about that and that was it.

11 Q Okay. So you basically don't remember a similar
 12 conversation being had in court?

13 A No.

14 MR. GORHAM: I don't have any more questions
 15 at this time, Your Honor.

16 THE COURT: Cross-examine?

17 MS. WALSH: Yes. Thank you.

18 HUGI + JAGGER WERE CO-WORKERS IN THE
 19 DA'S OFFICE BEFORE MY DAD HIRED JAGGER.
 20 HUGI MIGHT THINK IT'S OKAY TO AGREE WITH
 21 JAGGER TO WITHHOLD EVIDENCE FROM THE
 22 COURT, BUT I HAVE A PROBLEM WITH MY
 23 ATTORNEY CONSPIRING WITH THE PROSECUTOR
 24 TO WITHHOLD EXCULPATORY EVIDENCE
 25 FROM ME.

APP 12

shot you," I replied. "Mommy shot me," he said. "I thought you said that
shot you," I cried. "They told that me," he replied. "Let's go make a
mess," he said. Throughout the movie he kept saying, "Why is he sad?"
"Why is she sad?" I. Linn Monson R.W.

THE ORIGINAL
HOSPITAL RECORDS
WILL BE ENTERED INTO
EVIDENCE DURING TRIAL
IF NEEDED.

Playing in playroom happily stated "I have to go poop on the toilet" but did not pursue this when told he hadn't been pooping in the toilet for a long time & he could go in his diaper. Chase then stated "I can't", & started crying for 25 min. clear yellow urine, pt. continued to cry & refused to get on the potty and "be a baby" but was easily comforted by mother.

"THAT MAN SHOT ME," HE SAID.

[illegible]

DATE 7-13-83

- 13-23

USING CARE RECORD

APPENDIX 93

TIME AND INITIAL IF ACTIVITY, OBSERVATION, OR
S BEEN GIVEN UNEVENTFULLY.

ANY CATEGORIES THAT ARE NOT APPLICABLE.
BACK IF NEEDED FOR NON-ROUTINE CARE OR

SYSTEMS
REVIEW
(Initial if
asymptomatic
Circle & explain
if abnormal).

OBSERVATIONS. POSTERIOR SPACE ON BACK
FOR DETAILED CHARTING WHERE INDICATED.
CROSS OUT UNUSED LINES AND SIGN ALL EN-
TRIES.

TGDB Bed/Position
Cath/Peri Inc.
BM Guaiac
IV TXN
NPO p.m.

DATE: 1/14/83
TIME: 0700
CNA: [Signature]

TCDB
Position Chair
BRP
Nourishment
Lunch 80%
Assist Sell
Cath/Peri
BM Guaiac
IV TXN

DATE: 1/14/83
TIME: 0800
CNA: [Signature]

TCDB
Position Chair
BRP
Nourishment
Lunch 80%
Assist Sell
Cath/Peri
BM Guaiac
IV TXN

DATE: 1/14/83
TIME: 0900
CNA: [Signature]

TCDB
Position Chair
BRP
Nourishment
Lunch 80%
Assist Sell
Cath/Peri
BM Guaiac
IV TXN

DATE: 1/14/83
TIME: 1000
CNA: [Signature]

DATE: 1/14/83
TIME: 1100
CNA: [Signature]

TIME 0700
CNS 11/1
Resp. 11/1
CV 11/1
GI 11/1
GU 11/1
MS 11/1
Integ. 11/1
Psych/Social 11/1

DESCRIBE
PAIN AND
RESPONSE
TO Rx

2300-0700
[Signature]

TIME 0800
CNS
Resp.
CV
GI
GU
MS
Integ.
Psych/Social

DESCRIBE
PAIN AND
RESPONSE
TO Rx

0700-1500
[Signature]

TIME 1100
CNS
Resp.
CV
GI
GU
MS
Integ.
Psych/Social

DESCRIBE
PAIN AND
RESPONSE
TO Rx

1500-2300
[Signature]

Signs well all over. [Signature]

[Signature]

[Signature]

Signs. Playing little man in bed. [Signature]

Signs. [Signature]

Signs. [Signature]

Signs. [Signature]

Signs. [Signature]

Signs. [Signature]

NURSE

RECORD

SACRED HE

Appendix

13

"SEE HOW STRONG MY ARMS ARE?
BUT MY LEGS AREN'T, I CAN'T WALK.
THAT MAN WAS MEAN TO ME."

"HE SHOT ME."

-1500

Many replied "He shot me." What man said it replied "Jack". P Campbell
to be sign for physical therapy. J. Chase SPH
attended. for your young man. I'm saying a physical on physical. sitting
then balance good in sitting position. J. Chase SPH
the man will be playing. Drinking. I'm saying. drinking. I'm saying
the playing games. I'm saying. I'm saying. I'm saying. I'm saying
the man will be playing. Drinking. I'm saying. drinking. I'm saying
the man will be playing. Drinking. I'm saying. drinking. I'm saying
the man will be playing. Drinking. I'm saying. drinking. I'm saying

-2300

the man will be playing. Drinking. I'm saying. drinking. I'm saying
the man will be playing. Drinking. I'm saying. drinking. I'm saying
the man will be playing. Drinking. I'm saying. drinking. I'm saying
the man will be playing. Drinking. I'm saying. drinking. I'm saying

DATE 7-14-83

7-14-83

SACRI.

CARE RECORD

GENE

Appendix

93

300-0700

ON 6-12-1984 @ 10 A.M. PROSECUTOR
HUGL ASKED JUDGE FOOTE TO KEEP
THESE STATEMENTS FROM THE JURY
(T.T. 2866)

THE COURT SO ORDERED (T.T. 2874)
AND THE JURY NEVER HEARD

15

HE SAID, "THAT NASTY MAN
WITH A GUN SHOT ME."

...I would rub his back but said "Don't touch me"
...told him his hole was up below he asked if Dr. Foster
...I said yes then he said "That Nasty Man"
...shot me" I asked do you know who that man is?
...said "Back like Jack in the bearstock." I said
...the bearstock is a story Danny. He asked "who shot me?"
...I don't know do you?" No reply for 2 minutes
...rub my hole" I answered Dr Foster fixed your hole"
...I want out of the hospital I want my family" I said
...he began asking questions about hospital details
...I answered

DATE

7-20-83

2000
Sagun

13-24-62

SACRE

ING CAR

Appendix

93

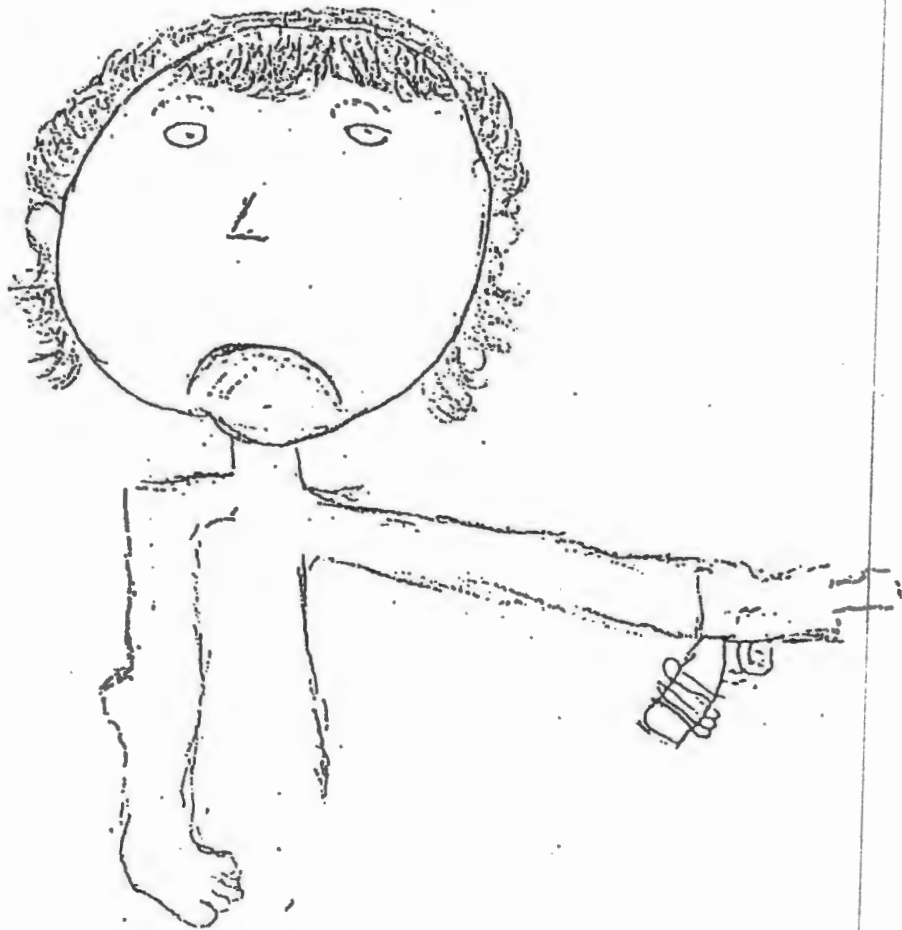
3-5-84

3-5-24

man in suit

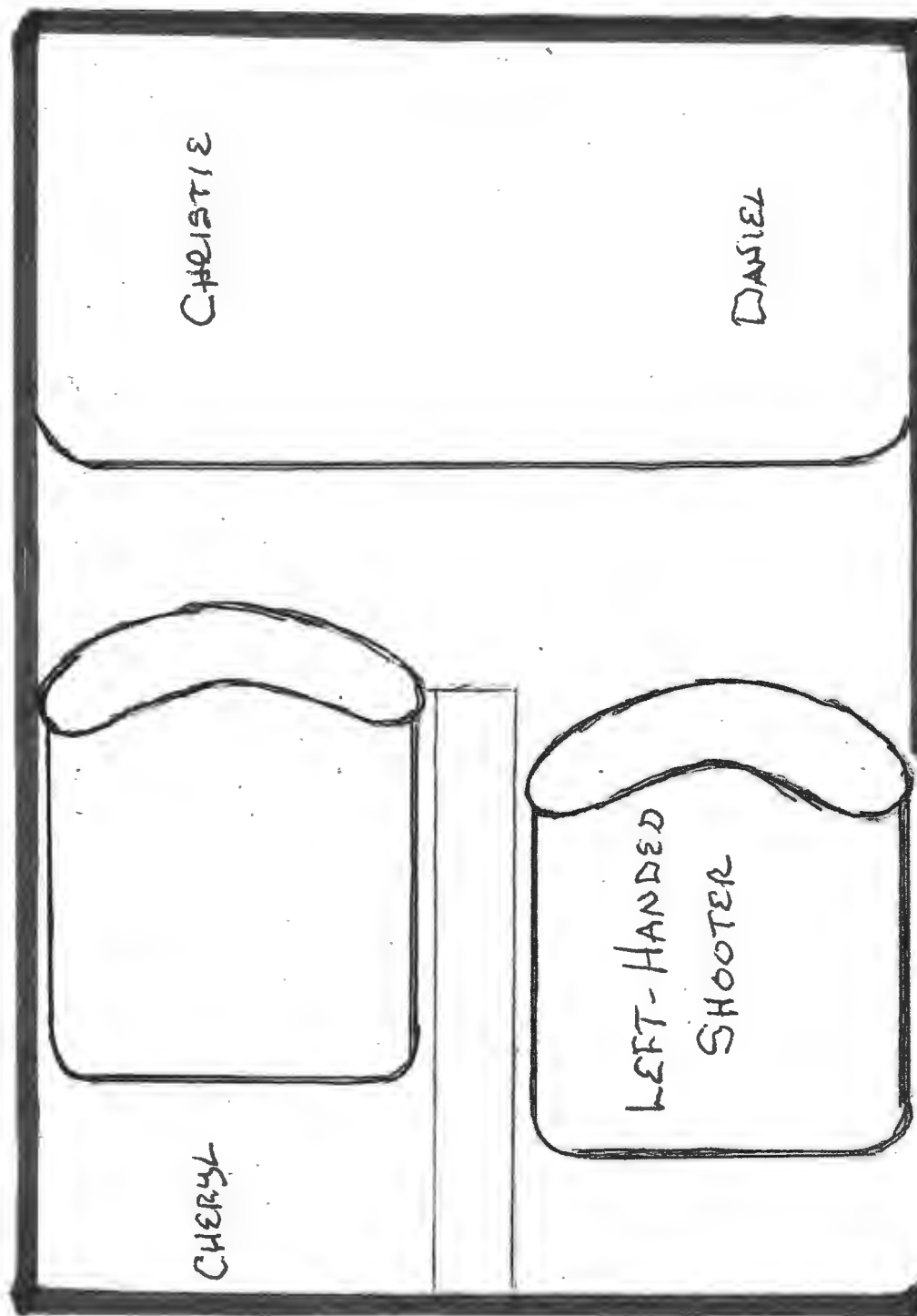
and...

... that could be...



APP 14

2066



A RIGHT-HANDED PERSON CANNOT
BEND THE RIGHT ELBOW BACKWARD
TO POINT A GUN AT DAN.

APP 15



JUNE 1983

TWO WEEKS AFTER
THE SHOOTING. MY
HAIR WAS TO MY
SHOULDERS + NOT
CURLY.



JUNE 1984

CHRIS KNOWS MY HAIR
HAS NEVER BEEN CURLY
AROUND MY FACE.

APP 16

PETERSON WROTE CHERYL

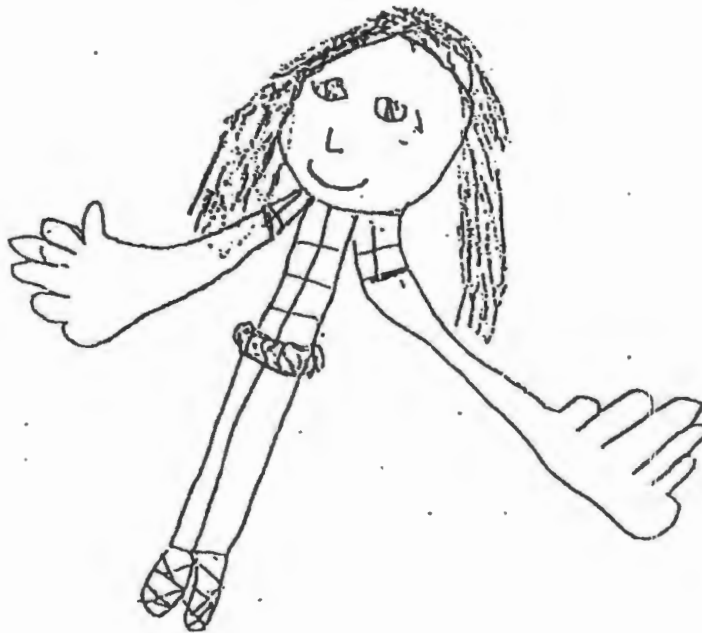
BUT THIS WAS ME,

7-6-1983

HOLDING UP MY EMPTY

HANDS IN A "DEFENSIVE
POSTURE."

EX. B



CHRISTIE DREW HER MOM WITH
A SHORT-SLEEVE PLAID SHIRT.
"FULL BODY. LONG HAIR"

ONLY I OWNED A PLAID SHIRT + ONLY
MY HAIR WAS THAT LONG + STRAIGHT.
CHERYL'S HAIR WAS SHORTER + CURLY.

APP 17

6-28-83

Oregon SP Lab #E-20836

E-14A

Two sets of stunted marks present on base

- City case E-3 has
one such mark - ms
comp confirms that the
mark on E-3 was made by
the same tool
working edge.

MK on E-3 base

There are no such marks
on E-14B or any other
car city cases.

(see photo)

none taken (no time)

A re exam has caused me to reconsider
the id - it seems to fall apart at 4x obj. I told
in PEX that this from association could be
studied further - he made some tests where in
he caused marks to be made on base of test city
by inside back of one of my ^{upper} arms - Perhaps
a cast of shell would allow to get small nicks
to be discerned more easily.

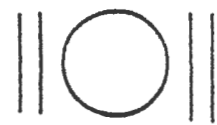
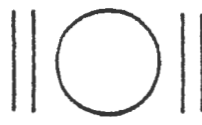
A RE EXAM HAS CAUSED ME TO RECONSIDER
THE ID - IT SEEMS TO FALL APART AT 4X OBJ.
PEX
HE CAUSED MARKS TO BE MADE ON THE BASE OF
TEST CARTRIDGES

APP 18

955

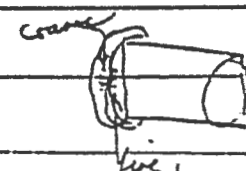
ITEM #	E-14-A	E-14-B	X	X	X	X
ITEM SOURCE	technical mag in glove compartment			street * mt. inside		room (14A)
CARTRIDGE TYPE	rim fire	rim fire.		of bullet near nose		also say
BULLET WT/STYLE		→ #1 D		both 14A-B = plain lead -		subsets E-7
FIRE, UNFIRED OR MISFIRED (MF)	unfired	unfired				
RESIDUE IN CASE	N/A					
CASE COMPOSITION	old brass					
HEADSTAMP/MANF	U-Rem-	U-Rem.				
RELOAD (RL) OR REMANF. (RM)						
TRACE EVIDENCE	N/A					
DAMAGE	N/A					
EXAMINER'S ID **						
MARKS						

Sketch cartridge case(s) and indicate location of significant marks (Use abbreviations below)



FIRING PIN=FPN; EXTRACTOR=EXT; EJECTOR=EJR; BREECH OR BOLT=BOB; CLIP=CL; MAGAZINE=MA; IMPRESSION=I; STRIA=ST; IDENT=ID; INCONCL.=IC; ELIMIN.=EL; CHAMBER MARKS=CM; CANNELURES=

COMPARISONS	CLASS	INDIV	CONCLUSION	REMARKS
14B/E-3			NOT ABLE TO ID	on 14B - no ext mks deep in rim & ext side so ext mks present w 6-3 - although some general coarse appearance in present origin, coarse detail limited in E-3 + comp of fine detail distinct result in suff agreement but ext mks for a pos w using fine detail IFO could set mks
E-3/E-6B-			INSUFFICIENT AGREEMENT	
E-3/E-5				
			NO ID AGAIN NO ID	



Notes: 14A nose mks comp w E-7 = no id (E-7 w 6-3, however) E-7 then comp w E-1 = again no id but E-1 is more heavily marked than E-7

** properly id'd by end of 2nd day.

OREGON STATE WITNESS - CRIMINALIST

J. Pex - D

1296

1 Then we have what we refer to as Matthews
2 which is a text on firearms identification that also
3 has combinations of these characteristics in it.

4 What we come down to is we have a best fit
5 of combinations is a Ruger semi-automatic pistol.

6 We have another that's a long shot, but I
7 felt worth including is a Browning pistol.

8 So at this point we have done what is
9 commercially available, and we have to start doing
10 some research on our own. SERIAL # 14-57485?

11 I obtained several Rugers around town from
12 both sportings goods stores and from our firearms, our
13 weapons expert in Salem.

14 He maintains our weapons that are seized
15 from courts and insures their destruction, but he had
16 a number of Rugers that were ready to be destroyed,
17 and he sent them to me that I might examine them.

18 I also looked at casings from Brownings and
19 from High Standard. High Standard didn't fit any of
20 these characteristics, but I wanted to be familiar
21 with them anyway.

22 After doing this examination then I
23 contacted various firearms experts around the country,
24 first with the FBI, the Department of Alcohol, Tobacco
25 and Firearms Laboratory.

ATF WILL HAVE A RECORD OF ALL THESE GUNS, SLATED TO BE DESTROYED.
IF 14-57485 IS ONE OF THESE GUNS, THE STATE HAS A HUGE PROBLEM.

- (APP 19)

5-7-1984 WAS THE
DAY BEFORE TRIAL

FILED ^{SP-1-1}
APR 23 1964
AT 2 25 O'CLOCK P.M.

MAY 07 1984

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR ~~AMERSON~~ ^{Clatsop} County Oregon

THE STATE OF OREGON,

Plaintiff.

vs.

ELIZABETH BLANE DOWNS,

Defensivität

Case No. 10-84-01377

NOTES

COMES NOW the Defendant, Elizabeth Diane Downs, by and through her attorney, James C. Jagger, and moves this Court for an order directing the State of Oregon to disclose to the Defendant all exculpatory material, including but not limited to all reports generated by the Lane County Sheriff's Department or other agencies or the District Attorney's Office relating to the individual who the Defendant has described and indicated was the perpetrator of the assaults upon her children and herself and reports and documents and other material relating to a certain yellow vehicle that was observed by the Defendant prior to the assault and was missing from the area subsequent to the assault.

In the opinion of counsel, this Motion is well founded in law and in fact and is not filed for the purpose of delay. This motion is further based upon the Fifth Amendment of the United States Constitution which guarantees that no person shall be deprived of liberty without due process of law. This Motion is further based upon the Affidavit of counsel attached hereto and by this reference incorporated herein and the Points and Authorities cited hereafter.

JACER & HOLLAND
Attorneys for Defendant

By: James E. Pappert, OSB 70-010

POINTS AND AUTHORITIES

It is clear that Oregon has enacted certain disclosure statutes does not mean that the Oregon Legislature was retreating from the broader pretrial disclosure of exculpatory material required by recent decisions of the United States Supreme Court, the Oregon Supreme Court and the Oregon Court of Appeals. Brady v. Maryland, 373 US 83, 83 Sup Ct 1194, 10 Lawyers Ed., 2nd 215 (1963); State, ex rel Dooley v. Connal, 257 Or 94, 475 P2d 582 (1970); Hanson v. Supp., 5 Or App 312, 484 P2d 847 (1971). Therefore, the prosecution in Oregon is required as a matter of due process to disclose voluntarily, at such time as will allow the Defendant to use it effectively in his or her own defense, all evidence

MOTION -1-

Appendix 20

APP-L-2

of substantial significance which, if believed, would be seriously considered by the trier of fact in determining guilt or innocence, or would affect sentencing.

It appears clear, based upon the Affidavit of counsel filed herewith, that the State of Oregon, by and through their respective agencies, has acquired information concerning various citations of persons matching the description of the perpetrator of these offenses as set forth by the Defendant and also citations of the particular vehicle that was described by the Defendant. None of this has been disclosed to the Defendant.

JACKER & HOLLAND
Attorneys for Defendant

By: 

James C. Jacker, OSB 70-070

JACKER & HOLLAND
1400 Oak Street
Oak Coast Building
Eugene, Oregon 97401
Telephone: 325-1451

MOTION -2-

APPENDIX 20

APP-M-1

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

THE STATE OF OREGON,

Case No. 10-84-01377

Plaintiff,

AFFIDAVIT

vs.

ELIZABETH DIANE DOWNS,

Defendant.

STATE OF OREGON)

) ss.

County of Lane)

I, James C. Jagger, being first duly sworn on oath, hereby depose and say:

I am the attorney of record for the Defendant in the above-entitled matter. I have received a certain disclosure from the State of Oregon, a great portion of that discovery having been generated basically by the Defendant and by certain hospital records from the McKenzie Willamette Hospital. I have received some investigative reports from the Lane County Sheriff's Department and other agencies. For the most part, none of those reports deal with any follow-up or contact with persons who may have contacted the various agencies or about which the agencies may have contacted other parties and obtained information concerning citations of potential suspects generally matching the description of the person as described by the Defendant or citations concerning the yellow vehicle described by the Defendant.

Fortunately, through the media coverage of this particular case, a few of these persons who have contacted the Lane County Sheriff's Department both reporting persons seen within the general area who matched the description of the suspect as given by Ms. Downs or who have seen vehicles in the general area that have generally matched the description as given by the Defendant, have contacted this office or Ms. Downs' parent's residence. These various people that I have contacted have indicated some cursory contact with the Lane County Sheriff's Department or other agency. For the most part, each of them was concerned about the lack of follow-up or care taken by the respective agencies in obtaining their information. I have not received any reports concerning these individuals from the State of Oregon. I became concerned about this and therefore attempted to contact members of the Lane County Sheriff's Department to attempt to find and interview detectives and other persons who would have made contact with these persons. While early on in this matter an investigator was hired by the Fredericksens to do some limited amount of work, because of financial

AFFIDAVIT -1-

APPENDIX 20

140 Oak Street
Clackamas Building
Eugene, Oregon 97401
Telephone: (503) 341-1252

Appendix 20

1 A. No.

2 Q. Were there any other reports that you wrote
3 that contained information which at the time the
4 report was made tended to substantiate the defendant's
5 report of the incident?

6 A. That there was somebody else in the area,
7 you mean?

8 Q. In any way?

9 A. The only thing that I had was when somebody
10 would call in and say that they'd seen somebody in the
11 area. That's all I had to go on when I talked to the
12 people that I made contact with.

13 They saw someone walking on Marcola Road or
14 they'd seen somebody leave the golf course, and I
15 worked from there.

16 They had no idea who it was, and some of
17 them had descriptions and some of them didn't.

18 Q. Now you say that you eliminated these people
19 as suspects.

20 Did you do that at the time you interviewed
21 or contacted whoever made the report, or did you do
22 that later after all the evidence was gathered?

23 A. That was later. That was when my sergeant
24 told me that I could disregard any further follow-up on
25 anybody that was -- that I had reports on.

- (APP 21) -

R. Pond - ReD

192

JUDGE FOOTER

1 Q. Are you telling me that then at the time
 2 that you made those contacts or wrote those reports
 3 that the people described in those reports or the
 4 incidents described in those reports still as far as
 5 you were concerned may have substantiated the
 6 defendant's version of what happened?

7 A. At the time I would have to assume so, yes.
 8 I'm following up on these various leads of people in
 9 the area, and I did -- I obtained all the information
 10 I could up to the time that Sergeant Hince told me to
 11 disregard any further follow-up on anybody. There
 12 wasn't any need for it.

13 THE COURT: Any further questions?

14
 15 FURTHER REDIRECT EXAMINATION (Continued)

16
 17 BY MR. JAGGER:

18 Q. When was that?

19 A. When he told me that?

20 Q. Yes.

21 A. I don't have the exact day, probably in the
 22 middle of June or last of June prior to going to the
 23 jail. *The shooting was May 19th.*

24 Q. You were still working as a detective then?

25 A. Yes.

*THEY STOPPED LOOKING FOR THE MAN WHO SHOT MY
 CHILDREN ONE MONTH AFTER HE KILLED CATERLY.*

Appendix

21

:d)

1 contacts did you reduce to writing?

2 A. Probably in the neighborhood of 30 to 50.

3 Q. Were these all in formal reports or simply
4 in some private notes of yours?

5 A. That would be in report form.

6 Q. Did you make -- that's the formal -- either
7 handwritten or typewritten reports that are
8 customarily made in your office?

9 A. Yes.

10 Q. Did you keep -- were sometimes those made
11 off of other notes that you had taken at the time of
12 your interviews with people?

13 A. Occasionally, yes.

14 Q. Are those still retained?

15 A. I believe those were discarded.

16 Q. By you? 6 WEEKS AFTER THE SHOOTING

17 A. Well, when I left in July the investigation
18 continued, and there was a lot of miscellaneous things
19 that were thrown away.

20 Q. Okay. I guess the question is did you throw
21 it away yourself or you left them?

22 A. Right, I threw some of the notes away and
23 others have been discarded since.

24 Q. Some of the sightings of individuals who
25 people felt matched the description of the assailant

FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF OREGON

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Federal Public Defender
STEPHEN R. SADY
Chief Deputy
Steven Jacobson
Colleen B. Schmers
Bryan E. Lenzley*
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Arren Guvorn
Craig Weiserman*
Mark Bennett Weintraub*
Charles G. Rogers
Wendy Rae Willis
Gerald M. Needham
Christina Stebbins Dahl
Thomas J. Hester
* Eugene Branch Office

January 22, 1997

Detective Doug Welch
Lane County Sheriff's Office
125 E. 8th Avenue
Eugene
Oregon 97401

Dear Detective Welch:

Thank you for your recent telephone call about the evidence in the Downs case. As you suggested, I left messages last week for both Fred Hugi and Paul Graebner to telephone me about my request to review the remainder of the evidence. I have not heard back from either of them yet.

I understand from my conversation with you, and Loreli in your evidence room, that I need to set up an appointment to look at the material in the Sheriff's custody. I would like to suggest, tentatively, that I do that sometime in the week beginning February 3, barring some objection from the Lane County District Attorney's office.

As I indicated on the telephone, I would also be grateful for a copy of the evidence log that relates to the Downs case. As we discussed, the log should give me a good idea of what evidence is still in existence, and therefore what I can look at.

Please do not hesitate to contact me if there are any problems with this request. Thank you for your assistance.

Sincerely,



William J. Teesdale,
Federal Defender Investigator

cc. Wendy Rae Willis

FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF OREGON

STEVEN T. WAX
Federal Public Defender
STEPHEN R. SADY
Chief Deputy
Steven Jacobson
Colleen B. Scissors
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Gerald M. Needham
Christine Stebbins Dahl
Thomas J. Hester
Judith N. Rosenberg

February 5, 1997

Mr. Lynn Larsen
Assistant Attorney General
100 Justice Building
1162 Court Street NE
Salem, OR 97310

Re: *Downs v. Hoyt*
Civ No. 96-900 HA

Dear Lynn:

As I told you on the telephone today, I am seeking access to the evidence produced in the investigation of the criminal prosecution of Elizabeth Diane Downs. The Lane County Sheriff's Office has indicated to my investigator, William Teesdale, that they have custody of the evidence. It is my understanding that the evidence is a matter of public record.

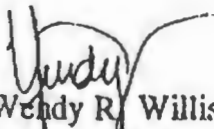
After some discussion with the senior investigator on the Downs case, Doug Welch, about how to get access to the evidence, we were referred to Fred Hugli and Paul Graebner of the Lane County District Attorney's office. After several attempts to contact those people, we did not receive a return call. Finally, today, Mr. Teesdale spoke with Doug Welch, who informed him that we could not have access to the information without your approval. In addition, Detective Welch has not responded to our request for a copy of the evidence log.

Of course, we feel we have a right to examine the evidence. However, in the interest of expedience, I request that you inform Lane County that you have no objection to our examining the evidence. This is not something over which I want to

February 5, 1997
Page 2

seek a court order. I hope that we can resolve it informally so that we can move forward in the case. Please contact me at your earliest convenience.

Sincerely,


Wendy R. Willis
Assistant Federal Public Defender

WRW:sms

FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF OREGON

STEVEN T. WAX
Federal Public Defender
STEPHEN R. SADY
Chief Deputy
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Christine Stebbins Dahl
Thomas J. Hester
Judith N. Rosenberg

February 12, 1997

Detective Doug Welch
Lane County Sheriff's Office
125 East Eighth Avenue
Eugene, OR 97401

Dear Detective Welch:

Thank you for relaying to me the Lane County District Attorney's position regarding access to the evidence in the Downs case. You mentioned in our conversation a feeling expressed by the district attorney that we were "attempting an end-run around the attorney general's office." I must say that I am not quite sure what you mean by that comment. As I understand it, the Lane County Sheriff has custody and control of the remains of the evidence in a closed criminal case. Access to that material was requested through the Lane County Sheriff since the Sheriff is the custodian, as is the usual practice in requesting access to public record material.

Regardless of the above, I would still like to obtain a copy of the evidence log relating to the Downs evidence. If you consider that a request for the inventory of evidence relating to Ms. Downs' case should also go through the attorney general's office, please advise me.

Thank you for your assistance.

Sincerely,



William J. Teesdale
Federal Defender Investigator

WJT:sms

APPENDIX

22

page 4 of 8

FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF OREGON

STEVEN T. WAX
Federal Public Defender
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Chief Deputy
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Wendy Rae Willis
Gerald M. Needham
Christine Stebbins Dahl
Thomas J. Hester
Judith N. Rosenberg

March 4, 1997

Mr. Lynn Larsen
Assistant Attorney General
100 Justice Building
1162 Court Street NE
Salem, OR 97310

Re: *Downs v. Hoyt*
Civ No. 96-900 HA

Dear Lynn:

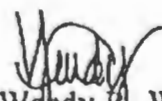
I am again writing regarding the evidence in the Diane Downs habeas case. At your request and the request of the Lane County Sheriff's Office, I wrote you on February 5, 1997, regarding our request to view the evidence produced in the investigation of the criminal prosecution of Elizabeth Diane Downs.

I spoke with you on the telephone on February 21, 1997, regarding your position on the matter. You indicated at that time that you needed to consult with Lane County. Because of the time constraints of this case, I need to know your position as soon as possible.

I hope that we do not have to litigate this either as a public records request or before the federal court. Please contact me at your earliest convenience so that I can make arrangements to view the evidence.

Sincerely,

THE CLASSIC
RUN-AROUND


Wendy R. Willis
Assistant Federal Public Defender

WRW:sms

APPENDIX 22 page 5 of 8

HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
TRIAL DIVISION

100 Justice Building
1162 Court Street, NE
Salem, Oregon 97310-0506
FAX: (503) 373-2147
TDD: (503) 378-5938
Phone: (503) 378-6313

March 6, 1997

1997

Wendy Willis
Federal Public Defender
101 S.W. Main Street, Suite 1700
Portland, Oregon 97204

Re: Downs v. Hoyt
U.S. District Court Case No. 96-900-HA

Dear Wendy:

I have contacted the Lane County District Attorney's Office about your request to view the evidence in the Downs criminal case. All the trial exhibits were returned to the party who introduced them at trial. Consequently, any evidence submitted by the defense was returned to Jim Jagger. As far as the evidence returned to the State, the DA's office will not voluntarily produce any of the State's evidence for inspection. The DA's position in all cases on appeal is that no requests under the Public Records law are granted due to the pending criminal matter.

Very truly yours,

Lynn David Larsen
Assistant Attorney General

KARDY MYERS
ATTORNEY GENERAL

FEB 20 1998



DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

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FAX: (503) 373-2147
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DEPARTMENT OF JUSTICE
TRIAL DIVISION

February 19, 1998

1998

Wendy R. Willis
Assistant Federal Public Defender
101 S.W. Main Street, Suite 1700
Portland, Oregon 97204

Re: Diane Downs v. Sonia Hoyt
USDC Civil No. 96-900-ST

Dear Wendy:

This is to follow up on our recent conversation about the
discovery ordered from Judge Haggerty.

1. The District Attorney has the information indicated in the judge's ruling at page 6, paragraph 1.
2. The Oregon State Police in Salem have the fingerprint information listed in Judge Haggerty's order at page 6, paragraph 2.
3. The Lane County Sheriff's Office has told to me that there is no "evidence log", as listed in Judge Haggerty's order at page 6, paragraph 3.
4. Regarding Judge Haggerty's order at page 7, paragraph 5, the Lane County Sheriff's Office has indicated to me that it still has all the reports that were discovered in the state criminal proceedings. There are no remaining handwritten notes for those reports, because the practice of the office is to replace the handwritten notes with the typed reports once the reports are completed.

In addition, the Sheriff's Office has no existing notes or reports "received by the Sheriff's Office in response to the case's publicity." Any such notes were made exhibits by the Court in the state criminal proceeding, when Judge Foote reviewed those notes to determine what would be turned over to the defense. The Court has told the Lane County Sheriff's Office

Letter to Wendy R. Willis
Diane Downs v. Sonia Hoyt
February 19, 1998
Page 2

that those exhibits were destroyed by the Court on August 27, 1987.

5. I have checked on the transcripts of voir dire. Apparently voir dire was reported. However, the court reporter who handled most of the trial is no longer with the Court, but apparently she is in the area somewhere. She is supposed to get back to me on locating the notes and making a transcript. I will keep you posted on that issue.

Please let me know when you would like to review that information that is available. I can make the necessary arrangements.

Very truly yours,



Lynn David Larsen
Assistant Attorney General

JTT26728/LDU/mad

Wendy R. Willis, OSB 94496
Assistant Federal Public Defender
101 SW Main Street, Suite 1700
Portland, OR 97204
(503) 326-2123

Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ELIZABETH DIANE DOWNS,)	
	)	CV No. 96-900 HA
Petitioner,)	
	)	AFFIDAVIT OF
vs.	)	WILLIAM TEESDALE
)	
SONYA HOYT, Superintendent,)	
Oregon Women's Correctional Center,)	
)	
Respondent.)	
STATE OF OREGON)	
	)	ss.
County of Multnomah)	

I, William J. Teesdale, do solemnly swear and affirm:

I am an investigator employed by the Federal Public Defender for the District of
Oregon. I am also an attorney licensed to practice before the bars of Oregon and
England. For approximately the past year I have been assigned to investigate the
claims made by Diane Downs in Downs v. Hoyt, CV 96-900 HA..

On February 23, 1998, I had a telephone conversation with Detective Doug Welch of the Lane County Sheriff's office. My call was made in order to confirm a meeting at the Lane County Sheriff's office set for February 25, 1998.

During my conversation with Detective Welch, I was informed by him that all of the physical evidence in the Downs case had been destroyed. Detective Welch also told me that there were no notes of police reports or suspect leads still in existence.

Detective Welch said that any notes that the state appeals court had on suspect leads were destroyed in 1987.

I responded to Detective Welch that I was surprised to hear that all of the physical evidence had been destroyed, because we had received a letter from Assistant Attorney General Lynn Larsen, which indicated that the physical evidence was available for us to review at the district attorney's office. Detective Welch then reiterated that all of the physical evidence had been destroyed and that he was not aware of any evidence in the possession of the Lane County Sheriff's office that would be covered by our discovery motion. I then indicated to Detective Welch that I would check with the district attorney's office about whether or not they still had physical evidence. **THE CHLOEA GUM WAS EXHIBIT 15**

On February 25, 1998, Assistant Federal Public Defender Wendy Willis and I went to the district attorney's office and spent several hours examining physical evidence and exhibits introduced by the state at Diane Downs' trial. After finishing our

review at the district attorney's office, Ms. Willis and I went to the Lane County Sheriff's office and were shown three boxes of documents and photographs relating to the Downs case. At the outset of our review of this material, we were introduced to Detective Welch, who was present to supervise our review.

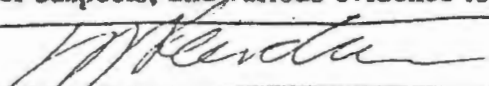
I asked Detective Welch whether or not I had misunderstood him when he said that all of the physical evidence had been destroyed, since Ms. Willis and I had spent about four hours reviewing it at the district attorney's office. Detective Welch responded that I must have misunderstood what he said and that he meant that the Lane County Sheriff's office did not have any physical evidence. Detective Welch then said that the Lane County Sheriff just had "case books" and that there were no notes of police reports or information about leads to other suspects.

Ms. Willis and I then spent about 2 hours looking through the material contained in three boxes. It was apparent from a cursory review of the documents that there were many notes of police reports, considerable information about leads on other suspects, and a variety of different handwritten and typed logs of evidence.

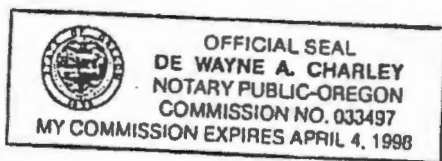
On March 4, 1998, Ms. Willis and I returned to the Lane County Sheriff's office and spent a full day copying the material from the three boxes, amounting to about 4,700 pages of documents. We were ably assisted in this task by Lane County Sheriff's Deputy Brian Smeltzer.

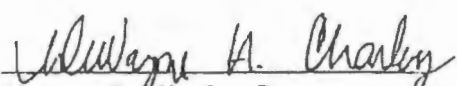
Although I have not yet conducted an in-depth review of the 4,700 pages^f
retrieved from the Lane County Sheriff, there are unquestionably many police reports,
notes, and other documents that I have never seen before.

Prior to receiving the documents from the Lane County Sheriff, I had collected documents about the state investigation from a number of different sources. These sources include Ms. Downs' family; her trial attorney, James C. Jagger; and her post-conviction attorney, Steven H. Gorham. The documents provided by Ms. Downs' family mostly represent the documents from Mr. Jagger's file, which was returned to the family at the end of his representation. I am familiar enough with this material to
know that the documents from the Lane County Sheriff's office contain many new
phone reports, notes, information on other suspects, and various evidence logs.


WILLIAM J. TEESDALE

SUBSCRIBED AND SWORN TO BEFORE ME this 13 day of March,
1998.




Notary Public for Oregon

THE SHOOTING
WAS 5-19-83

5-1-83

this report withheld
by State until
April 10, 1998

- George Shipman 3210 Story Bl 683 8262
WMA 509 straw hat bad complexion dirty clothing
clutching red hand bag or pack. 3 kids on
bikes were peddling away quickly from
him as he was standing at corner of
Story Bl & Lorraine Hwy. There was a small
red foreign car in the area also. spw
- Joe Isaac 688-1008 overheard conversation at
work that a co-worker thinks he knows
the suspect but is afraid to give info
due to the "suspect" being affiliated w/
Jill Soule. Isaac works at W side post
office 687-6633 for further info.
- Jerry Jones no phone lives across from Elmira
store in white house w/ blue trim. Thinks
he saw in man at Richardson park around
1900 hours who looked like the suspect
picture in the paper. Jerry was w/ a large
group of drunk. 1st had long hair dark brown
wearing beige T-shirt, blue jeans, white tennis
shoes.
- 30 Bettner 343-9009 thinks he knows suspect
from picture in paper as Art Heister. Bettner
has not seen him in several months.
- 30 refused name. Saw a guy that looked like suspect
at 1st & Van Buren Eng 509. WMA white cap
plaid coat red marks on neck thinner face.
- Edwin Allen had V.A. benefits for personality
disorder compl knew him at university. Hasn't seen
him in 5 years; saw in newspaper.
Frank Zulich 935-3056
2120 Zulich doesn't think last name is correct.
he will check further.
- knows guy like Olds yellow - lives at 2024
Amercante - may look like suspect.

Appendix 23

5003212

9120212

Wendy R. Willis, OSB 94496
Assistant Federal Public Defender
101 S.W. Main Street, Suite 1700
Portland, OR 97204
Telephone: (503) 326-2123

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ELIZABETH DIANE DOWNS,)	
)	
Petitioner,	)	No. CV 96-900 (HA)
)	
vs.	)	AFFIDAVIT OF
	)	JAMES C. JAGGER
SONIA HOYT, Superintendent,)	
Oregon Women's Correctional Center,)	
)	
Respondent.)	
STATE OF OREGON)	
	) ss.	
County of Lane)	

I, James C. Jagger, being first duly sworn, depose and state as follows:

1. I am a member of the Bar of the state of Oregon.
2. In 1983 and 1984, I represented Elizabeth Diane Downs in her criminal case, Lane County Circuit Court case number 10-84-01377, and in the related juvenile matters, Lane County Juvenile Court case numbers 83-232 and 83-233.

APP 24/

3. During the course of those cases, I made numerous requests for discovery, including requests for exculpatory material under *Brady v. Maryland*, 373 U.S. 83, 87 (1963). I made specific requests for police reports and notes regarding citizen and law enforcement calls in response to the composite drawing and the description of the yellow car printed and aired in the local media. I also requested all statements made by my client.

4. Ultimately, I received reports regarding four witnesses who called the police to report seeing a man who matched the description given by Ms. Downs.

5. On, Friday, April 10, 1998, I met with Wendy Willis, the attorney appointed to represent Ms. Downs in her federal habeas corpus proceeding.

6. At that meeting, Ms. Willis provided me with a stack of reports she obtained from the Lane County Sheriff's Office. I reviewed those reports to determine whether I received them during discovery. I sorted these reports into three stacks: (1) reports and notes I definitely had not received during discovery; (2) reports and notes that did not look familiar, but I am not sure whether I received during discovery; and (3) reports and notes that I definitely was given access to before trial. Those reports have now been Bates stamped and are attached to this affidavit for reference. The reports I definitely did not receive are stamped with Bates Nos. 9120002 through 9120316; the reports I may not have received are stamped with Bates Nos. 9120317 through 9120386, and the reports I did receive are stamped with Bates Nos. 9120387 through 9120589.

7. If I had received the notes and reports regarding leads from members of the

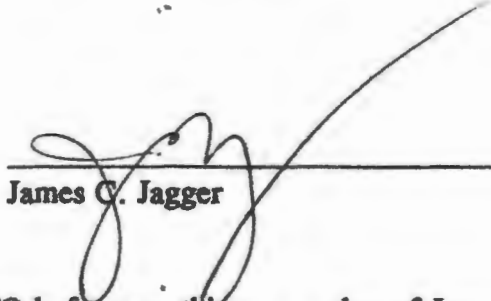
SEE
APP 23
9120212

APP 24

community and other law enforcement agencies, I would have followed up on every lead to locate witnesses to corroborate Ms. Downs' version of events and to try to locate the actual assailant.

8. I felt I was at a great disadvantage to have been denied access to reports and notes corroborating Ms. Downs' version of events.

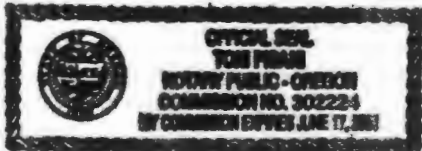
9. I would have used any statements attributed to Ms. Downs in preparing for trial.


James C. Jagger

SUBSCRIBED AND SWORN TO before me this _____ day of June, 1998, by
James C. Jagger.


Notary Public for Oregon

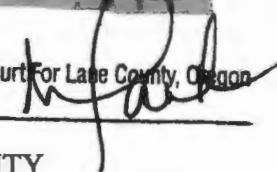
My Commission Expires: 6-17-01



FILED
AT ... 2 ... O'CLOCK ... M

REC'D
11-13-15

OCT 30 2015

Circuit Court For Lane County, Oregon
BY 

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

ELIZABETH DIANE DOWNS,

Petitioner,

v.

STATE OF OREGON,

Defendant.

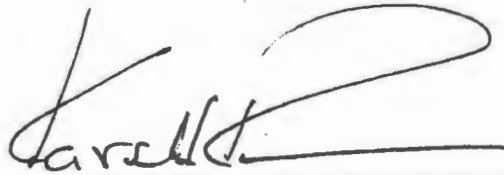
Case No. 15CV11115

DNA
CASE

ORDER ASSIGNING
CASE TO THE HONORABLE
CHARLES M. ZENNACHÈ

THIS MATTER comes before the Court upon the Court's own motion, it appearing appropriate that this case be assigned, therefore;

IT IS HEREBY ORDERED this case is assigned to the Honorable Charles M. Zennachè for all future purposes.



Karsten H. Rasmussen, Presiding Judge

Prepared by: M. Panter

Cc: Elizabeth Diane Downs
CCWF 512-02-2L
PO Box 1508
Chowcilla, CA 93610-1508

APP 25

COPY

REC-15

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE
125 E. 8th Ave. Eugene Oregon 97401

Elizabeth Diane Downs

Plaintiff

v.

State of Oregon

Defendant

Case No: 15CV11115

**JUDGMENT DISMISSING
PETITION FOR
WRIT OF HABEAS CORPUS**

This matter came before the court on Elizabeth Diane Down's Petition for a Writ of Habeas Corpus. The court having reviewed the Petition for Writ of Habeas Corpus, Addendum to Petition for Writ of Habeas Corpus, and Second Addendum to Petition for Writ of Habeas Corpus (hereinafter referred to collectively as the Petition). The Petition contains eight claims for relief:

1. Partial fingerprints at the crime scene can now be matched with new technology;
2. DNA on chewed gum found at the crime scene can now be matched;
3. Fingerprints on Beer cans found at the crime scene can be matched;
4. Another murder victim found in a beer cooler 19 days later;
5. Shoeprints at the crime scene may connect to the beer cooler murder;
6. Forged letter contains clues to identity of real killer;
7. The trial court did not have the authority to increase the sentence on count 4 from 20 to 30 years.
8. That the petitioner had been denied her right to a jury trial on any facts that were used to increase the sentence.

On its own motion, the Court hereby denies the Petition as meritless for the following reasons:


- A. The petition fails to comply with the requirements of ORS 34.360(2).
- B. The petition fails to comply with the requirements of ORS 34.360(5).
- C. Claim 2 is the kind of claim that can only be brought in a post-conviction relief proceeding pursuant to ORS 138.690.
- D. Claims 7 and 8 are the kinds of claims can only be brought in a post-conviction relief proceeding and not by Writ of Habeas Corpus. See ORS 138,540 allowing Writ of habeas corpus only when "a person restrained by virtue of a judgment upon a

App 25

conviction of a crime asserts the illegality of the restraint upon grounds other than the unlawfulness of such judgment or the proceedings upon which it is based..." See also ORS 34.330(3).

THEREFORE, IT IS HEREBY ADJUDGED THAT the Petition is dismissed without prejudice.

Signed: 12/18/2015 03:00 PM

A handwritten signature in cursive script, appearing to read "Charles M. Zennaché", written over a horizontal line.

Charles M. Zennaché, Circuit Court Judge

App 25

WASHINGTON COUNTY CIRCUIT COURT

150 N. 1st Avenue
Hillsboro, Oregon 97124
(503) 846-8888
(503) 846-4863 TTY

For ADA accommodations, call (503) 846-8767

July 6, 2016

Elizabeth Diane Downs
CCWF 512-02-2L
P O Box 1508
Chowchilla, CA 93610-1508

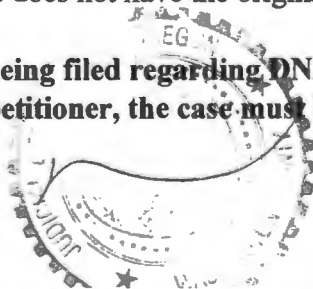
GOOSE CHASE
12-18-2015 to
7-6-2016

Re: Attached document: petition for Post Conviction Relief (Check # 129250 in the amount of \$252.00 is returned to Willadene R Frederickson)

The attached documents are being returned to you for the following reason(s):

- ☐ No filing fee enclosed. Please resubmit with \$_____.
- ☐ Incorrect filing fee. Please resubmit with \$_____.
- ☐ Signature missing on check.
- ☐ Incorrect payee - should be STATE OF OREGON.
- ☐ Personal checks are not accepted.
- ☐ Pleading must be on 8 ½ " x 11" paper.
- ☐ Incorrect case number.
- ☐ Case number missing.
- ☐ Not a Washington County Court case number.
- ☐ A Petition for Removal to the US District Court has been filed in this case. All further pleadings must be filed with the US District Court.
- ☐ The Return; proof of service is not an original document.
- ☐ The Return; proof of service does not have the original summons attached.

☒ **Other: The PCR case is being filed regarding DNA. Pursuant to the ORS referenced by the petitioner, the case must be file in the county of conviction. Thank you.**



APP 26



CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY
LANE COUNTY COURTHOUSE
125 E. 8TH AVENUE
EUGENE, OREGON 97401-2926

CHARLES M. ZENNACHÉ
CIRCUIT COURT JUDGE

Audra L. Stewart
Judicial Assistant

Michael Hajarizadeh
Law Clerk

Phone (541) 682-4259
Fax (541) 682-7437

rec'd
9-14-14

August 30, 2016

Elizabeth Diane Downs
CCWF 512-022L
PO Box 1508
Chowchilla, CA 93610-1508

Re: Petition for Post Conviction Relief

Dear Ms. Downs:

Your recent attempt to file the above referenced matter was brought to my attention by the clerk's office. It appears to raise the exact same claims for relief as those in your Petition for Post Conviction Relief filed April 17, 2015. As you know, I dismissed that Petition as meritless on December 18, 2015. It appears from your accompanying letter that you are now trying to get DNA testing pursuant to ORS 138.690. Unfortunately your "Petition" fails to comply with the procedure authorized in that statute. I have therefore directed the Clerk to return your filing and the accompanying check for the filing fee. If you wish to pursue the remedy provided for in ORS 138.690, you need to follow that procedure.

HABEAS
CORPUS
ORS
34.360

I HAD NO ACCESS TO
OREGON LAW BOOKS
+ DIDN'T KNOW
WHAT THIS MEANT.

Sincerely,

Charles M. Zennaché
Lane County Circuit Court Judge

/als

cc: Liz Rambo, Trial Court Administrator
Clerk of the Court
Lane County District Attorney

APP 26

MAY 3, 2022

OREGON PUBLIC DEFENDER

1143 OAK

EUGENE, OR 97401

IN RE: DNA PETITION - ORS 138.690

DEAR PD:

I'M FILING A DNA PETITION FOR POST
CONVICTION RELIEF. THE LAW SAYS THE
COURT SHALL CONVENE A HEARING TO
ADDRESS THE FACTS I'VE PRESENTED IN
MY PETITION.

BECAUSE I'M IN PRISON, I CAN'T RECALL
PEOPLE OR GATHER AFFIDAVITS, THAT BEING
THE CASE, THE COURT WILL NEED TO APPOINT
LEGAL REPRESENTATION TO HELP ME. IN
THE EVENT THEY TAKE YOUR OFFICE, I'M
SENDING YOU A COPY OF WHAT I'M
FILING + WHAT I'VE POSTED ON
dianedowns.com.

PRISONERS WILL WORK TOGETHER IN THIS.

Sincerely,
JR

APP 27

JUNE 2, 2022

NO
RESPONSE

OREGON PUBLIC DEFENDER
1143 OAK ST.
EUGENE, OR 97401

IN RE: DOWNS V OREGON --- 22 CV 16308

SIRS + MADAMS:

MY DNA PETITION WAS DOCKETED IN LAKE
COUNTY ON 5-18-2022. I FIGURE MY
PETITION FOR RESENTENCING WILL BE ON
THE DOCKET THIS WEEK (NEXT WEEK AT
THE LATEST).

I REQUESTED THE ASSISTANCE OF AN ATTORNEY
TO CHASE DOWN EVIDENCE + WITNESSES.

I HAVE FEDERAL DOCUMENTS THAT
INDICATE THE OREGON CRIME LABORATORY
WAS STILL IN POSSESSION OF THE EVIDENCE
IN THE DOWNS CASE (1983) AS LATE AS
1998. I NEED TO KNOW TO WHOM I
SHOULD SEND THESE DOCUMENTS.

IN 1998, THE FEAS CREATED A DNA LAW.
IN 2000, OREGON CREATES A DNA LAW.

MY ATTORNEY NEEDS TO KNOW THE EVIDENCE
IS THERE. LAKE COUNTY CAN'T BE ALLOWED
TO EASILY ADMIT THIS CASE ON THE
FALSE CLAIM THEY DESTROYED THE
EVIDENCE.

PLEASE LET ME KNOW THE NAME OF THE
PERSON APPOINTED TO REPRESENT ME.

THANK YOU,



ELIZABETH ADAMS DOWNS W49707
CCWF 512-02-16
PO Box 1508
CHOWCHILLA, CA 93610-1508

APP 27

September 28, 2022

INNOCENCE PROJECT

PO Box 5248

PORTLAND, OR 97208

IN RE : DNA TESTING / LANE COUNTY

DEAR MR. WAX :

ON 5-6-2022, I REQUESTED DNA TESTING
AND ATTORNEY REPRESENTATIONS IN DOWNS v
OREGON, 22-CV-16308. IT'S BEEN NEARLY
FIVE MONTHS AND THE COURT REFUSES TO
ASSIGN AN ATTORNEY OR TEST THE DNA.

IT SEEMS OBVIOUS THE STATE WOULD WANT TO
MOVE THIS RIGHT ALONG IF THE CHEWED
GUM FOUND NEXT TO A MURDER CASING
WAS HELPFUL TO THE STATE.

I NEED LEGAL REPRESENTATION TO PROVE THE
DNA SUPPORTS MY REQUEST FOR A NEW
TRIAL UNDER ORS 138.696 (2). PLEASE
REPRESENT ME.

SINCERELY,



APP 28

ELIZABETH DOWNS, Downs 649707

CCWF 512-02-12

PO Box 1508

CHOWCHILLA, CA 93610-1508

10-2-2022

RECEIVED

DATE: 10-11-22

STEVE,

DNA IS AT THE CORE OF WHAT YOUR PROJECT DOES. LAST WEEK I ASKED YOU TO LOOK INTO THE DNA PETITIONS I FILED IN LANE COUNTY IN MAY 2022. IT WAS ASSIGNED TO JUDGE CARLSON 8-8-2022. NOTHING ELSE HAS HAPPENED IN FIVE MONTHS.

I GOT TO THINKING THEY MIGHT NOT LET YOU SEE A COPY OF MY PETITION, SO I'D BETTER SEND IT TO YOU. THIS IS MY BACK UP COPY, SO PLEASE RETURN IT TO ME IN THE ENCLOSED, STAMPED ENVELOPE AFTER YOU COPY IT.

IT JUST SEEMS TO ME THE STATE WOULD DEAL WITH THIS QUICKLY IF THE DNA SUPPORTED THEIR CASE (OR IF IT WAS INNOCUOUS).

THE ONLY REASON I CAN THINK THEY REFUSE TO ACT ON THIS CASE IS BECAUSE THE DNA IN THE CHEWED GUM FOUND NEXT TO A MURDER CASING PROVES I'VE BEEN TELLING THE TRUTH ALL THESE 39 YEARS.

THAT'S EXACTLY WHAT YOUR STAFF LOOK FOR. I HOPE YOU'LL ALL WANT TO HELP ME.

Diane Downs

—OVER—

APP 28



Rec'd
11-3-2022

October 27, 2022

Privileged / Work Product Protected

Via Mail

Ms. Elizabeth Diane Downs
W49707
CCWF 512-02-2L
PO Box 1508
Chowchilla, CA 93610

Re: Your Request for Assistance

Dear Ms. Downs:

The Oregon Innocence Project has completed our review of your case, including the files maintained by the Office of the Federal Public Defender for the District of Oregon. I am writing to inform you that the Oregon Innocence Project will not represent you as counsel in your continued quest for exoneration. We would like to provide you some information to help you further pursue your case on your own or with retained or appointed counsel.

Evidence Potentially Available for DNA Testing

Based on the record, there are at least two types of physical evidence that were recovered near the crime scene in 1983 that may be susceptible to DNA testing, including: empty beer cans and "freshly chewed" bubble gum. If this evidence still exists and is susceptible to DNA testing, you may want to pursue testing of this evidence. While we have no reason to believe the evidence is not still available and susceptible to DNA testing, we have not confirmed either.

DNA testing of this physical evidence could provide information about other people who were near to the scene of the crime prior to the event. However, even assuming that another person's DNA is found on those items, that evidence alone may not conclusively establish your innocence. If DNA of James Haynes is identified on the evidence, that could be very helpful to your case (although it would not conclusively establish his involvement). Likewise, if someone else's DNA is found and that person is in other ways a viable suspect, that could also be helpful. That said, it is not a sure thing that the evidence is still available, that it is susceptible to testing, or that any DNA tested will prove helpful to your claim of innocence.

DNA Testing Motion

Enclosed with this memorandum are copies of the Oregon statutes relevant to what is referred to as a "DNA Testing Motion." The relevant statutory sections are ORS

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138.690, 138.692, 138.694, 138.696 and 138.697. The procedures for filing a post-conviction DNA Testing Motion were amended by statute in 2019 and are more liberal than the procedures that were in place prior to that time. Therefore, if you filed a DNA Testing Motion under the old statutes, you may be able to re-file such a motion under the new version.

You should carefully read the statutes if you would like to pursue this avenue because they must be followed precisely. In order to get a court order for testing to be performed, the court must find, among other things, that “[t]here is a reasonable probability that, had exculpatory results been available at the time of the underlying prosecution, there would have been a more favorable outcome to the underlying prosecution.” ORS 138.692(7)(d).

You may be able to get an attorney assigned by the State to help you with a DNA Testing Motion. A person who is eligible to seek relief under the DNA Testing Motion statute (including someone who has been convicted of aggravated murder) is entitled to the appointment of counsel at state expense to assist the person in determining whether to file a DNA Testing Motion and during all stages of the DNA Testing proceedings described in ORS 138.692, 138.696 and 138.697. The requirements for getting counsel appointed by the court are found in ORS 138.694(2).

James Haynes DNA

We have reviewed the statements made by a number of witnesses regarding James Haynes’ purported admissions of his involvement in the crime, and understand that you view him as the prime suspect. DNA matching Mr. Haynes would be a significant step in establishing his involvement. However, as you may know, Mr. Haynes died in 2013. In order to test any evidence for his DNA, you will need to procure either an item that contains his DNA or a sample of DNA of a close family member. Mr. Haynes’ son may still live in the Portland area and, if he was willing, could provide a DNA sample. This is not something he could be compelled to do, but he might be receptive to cooperation.

Please let us know if you have any questions and feel free to have any counsel that is engaged to work on your case reach out to us about our review of the Federal Public Defender’s Office case files. Best of luck to you in your continued pursuit of justice.

Lane County DNA Petition

In response to your letters dated 10-2-2022 and 09-28-2022, I reviewed the court record of the DNA petition you filed – case number 22CV16308. On October 4, 2022, Lane County Circuit Court Judge McAlpin entered a judgment dismissing the petition. Enclosed is a copy of the judgment and notice of judgment entered in the case. I have also enclosed your copy of the petition. ORS 138.697 is the statute authorizing an individual to appeal a judgment denying DNA testing. Please note, among other things, the time limits and notice requirements apply to appeals under ORS 138.697.

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Conclusion

Because OIP will not represent you as counsel in your continued pursuit for exoneration, we will be closing your case. We are very sorry that we are unable to assist you and wish you the best of luck in this tough situation.

Sincerely,

Kassidy Hetland
Staff Attorney

Encl:

ORS 138.690, 138.692, 138.694, 138.696 and 138.697

Petition for DNA Testing

Judgment Denying DNA Testing and Notice of Judgment NOT RECLOSED

My 10-2-2017 LETTER (ENCLOSED)

Apr 29

December 20, 2022

Elizabeth Diane Downs
ID# W49707
CCWF 512-02-01L
PO Box 1508
Chowchilla, CA 93610

Re: *Post Conviction Relief Appeal*
Lane County Case No. 22CV28855, 22CV16308

Ms. Downs:

My firm, O'Connor Weber LLC, has been notified that you want to appeal the judgment denying you post-conviction relief (PCR) in the above-referenced case. The Lane County Circuit Court appointed us to represent you on PCR appeal, and we have filed a Notice of Appeal with the Oregon Court of Appeals. A copy of the Notice of Appeal is enclosed.

I will briefly summarize the PCR appeal process. It is similar to the direct appeal process, which you may have gone through after your conviction and before your PCR trial. Someone will transcribe your trial and file the transcript with the Court of Appeals. The trial court will send the trial court file—the exhibits and other documents filed with the trial court—to the Court of Appeals. Once we have a complete copy of your trial court file and the transcript your case will be assigned to an experienced appellate attorney. You will be notified when your case is assigned to the appellate attorney who will brief your appeal.

It is important to understand the limitations of an appeal. We can only challenge the court's legal rulings. We cannot retry your case, we cannot argue that a witness lied, we cannot add evidence to the court record, and we cannot ask the Court of Appeals to reweigh the evidence. The only exception to that rule is the rare case where the trial court makes a finding of fact that is not supported by **any** evidence on the record. We also cannot argue that your post-conviction trial attorney was inadequate. We can only challenge rulings that were "preserved." That means that you or your PCR trial attorney must have raised a PCR claim in the petition and developed it during the PCR trial or made some objection during the proceedings to let the trial court know that it was making a legal error. With those limitations in mind, the attorney assigned to your case will review the post-conviction trial court record and raise meritorious legal issues in an Appellant's Opening Brief.

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The Oregon Department of Justice will file a Respondent's Answering Brief on behalf of the State. Then the Court of Appeals will review the briefs and decide your case. When the court decides your case, we will provide you with more information about your options for how to proceed.

Please keep in mind that if we do not win your appeal, the appellate courts may require you to pay the State of Oregon a prevailing party fee in the amount of \$100 under ORS 20.190(1) and also to pay costs under ORS 20.310(2) and ORAP 13.05. Alternatively, please understand that if we win your appeal you could be retried or resentedenced and it is possible that you could receive a longer sentence than was previously imposed.

Also, please remain in contact and notify us of any changes to your contact information. It is vital that we have your current contact information so we can keep you informed about your PCR appeal.

Finally, please write to us with any questions or concerns about the PCR appeals process or about your case. If you would like to schedule a call to discuss your case, please let us know in writing. If there is an urgent matter that cannot wait, you may also call us collect at the phone number listed on the letterhead. However, keep in mind that we may not always be available to accept collect calls. Thus, it is easier to communicate in writing.

Sometimes weeks or months may pass without you hearing from us. Do not be concerned. We will notify you of all significant events in your appeal, such as the filing of the transcript, the filing of motions and the filing of briefs. However, the Court of Appeals routinely grants transcribers extensions of time to file the transcript, and it routinely grants us and the State extensions of time to file the briefs. We will not notify you of those routine extensions of time. If you grow concerned at any point, please contact us.

We look forward to working with you on your PCR appeal.

Sincerely,

s/ Jedediah Peterson

Jedediah Peterson

App 30